

The Senate

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Environment and  
Communications Legislation  
Committee

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Communications Legislation Amendment  
(Combating Misinformation and  
Disinformation) Bill 2024 [Provisions]

November 2024

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# Chair's Foreword

Digital communications platforms have become an indispensable part of Australian life, allowing us to connect with family and friends in Australia and around the world, connect with business and services, and read about local and global events. As Australians' use of digital platforms has become more frequent, research has shown that concerns about the information accessed have also increased, with 75 per cent of Australians stating they were concerned about misinformation and disinformation.<sup>1</sup>

Misinformation and disinformation can spread rapidly via digital platforms, which poses serious threats to the functioning of a healthy democracy. We rely on the flow of credible, trusted sources of information for public debate, and four out of five Australians want the spread of misinformation on social media to be addressed in Australia.<sup>2</sup>

The *Australian Code of Practice on Disinformation and Misinformation*, a voluntary code developed by the digital platforms industry and registered with the Australian Communications and Media Authority (ACMA), was the first step towards digital platforms taking more responsibility to address the threats of mis- and disinformation. However, scrutiny of the operation of the voluntary code has shown that this step has not delivered the protections required.

Existing efforts for regulation of the digital platforms have not been able to deal with the seriously harmful effects of mis- and disinformation, with no incentives for digital platforms to be proactive in their management of content on their services.

The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill) seeks to impose transparency obligations on digital platforms to require them to be upfront about their actions to combat mis- and disinformation.

Significant public and industry consultation has taken place over the course of the development of the bill, with an exposure draft released in 2023. Many submitters and witnesses who participated in the bill's inquiry commented on the exposure draft, and many noted the positive improvements made between the exposure draft and the bill examined by the committee. During the conduct of the inquiry, further positive amendments were passed by the House of Representatives.

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<sup>1</sup> Australian Communications and Media Authority (ACMA), *Digital platforms' efforts under voluntary efforts to combat misinformation and disinformation: Third report to government*, September 2024, p. 1.

<sup>2</sup> Tanya Notley et al, [Adult Media Literacy in 2024: Australian Attitudes, Experiences and Needs](#), Australian Media Literacy Alliance, August 2024, p. 15.

The committee received many thousands of emails, submissions and phone calls from members of the public expressing their views on the bill. The range of views on different elements of the bill show that a healthy debate on legislation which affects Australians is important to the functioning of our democratic system. It is important that Australians can express their views on significant matters of policy.

However, some of the views put forward to the committee were deeply polarising, and some were highly offensive. Some expressed concerns at the claims they had heard about the bill rather than the actual content of the bill.

After years of consultation, discussion and negotiation to bring on legislation to regulate digital platforms we find ourselves at a juncture where there is no pathway for this bill to pass through the Senate.

On 22 November I received a letter from the Hon Michelle Rowland MP, Minister for Communications, advising that the Government has decided to not proceed with this bill (letter at Appendix 1). The Minister also invited 'all Parliamentarians to work with the Government to strengthen our democratic institutions and keep Australians safe online, while safeguarding values like freedom of expression.'

The threat posed by misinformation and disinformation is a deeply troubling issue for Australian democracy and national security. It places our community at risk of real harm, and it is incumbent upon us as elected representatives to work through our differences and find the solutions.

On this occasion, while there is widespread agreement on the issue, we have not found agreement on the solution. While many members of this Parliament have worked constructively on this issue, others have placed their political positioning ahead of compromise and community safety.

With no pathway for this bill through the Senate, the primary recommendation is for the bill to be withdrawn and immediately discharged from the Notice Paper.

I urge all Parliamentarians to work collaboratively with the Government to continue to pursue policy and legislation to keep our communities safe in an ever-evolving digital world.

# List of recommendations

## Recommendation 1

6.28 The committee recommends that the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 be withdrawn and immediately discharged from the Notice Paper.



# Executive Summary

## **What does this bill do?**

Throughout the inquiry, a number of claims about the bill's purpose and content have circulated online. There are important points to make about what this bill does, and why.

## **Protections for freedom of expression and human rights**

The bill's definitions of misinformation and disinformation, and the provisions which exclude certain content from its coverage, have attempted to strike a balance between upholding freedom of expression and combatting the serious effects of misinformation and disinformation on Australian society.

The bill is mindful of Australia's international human rights obligations, and has been reviewed by the Office of International Law within the Attorney-General's Department and the Australian Government Solicitor.

The bill seeks to strengthen elements of human rights protections, by ensuring that digital platforms reduce the risk of seriously harmful misinformation and disinformation being disseminated online. As stated in the bill's Explanatory Memorandum, in this way the bill assists to protect the right of Australians to security of the person.<sup>1</sup> The bill also seeks to safeguard the right of Australians to participate in public affairs, and to vote and be elected, by seeking to minimise misinformation and disinformation which circulates and undermines Australians' ability to make informed choices in the conduct of public affairs.

Public debate would be protected by providing for the reasonable dissemination of content for academic, artistic, scientific or religious purposes.

## **Ensuring digital platforms are transparent with the Australian public**

The bill proposes to ensure that digital platforms are transparent with the Australian public, with measures designed to allow the ACMA to track the platforms' progress in addressing misinformation and disinformation. This would be done through proposed powers for the ACMA to be able to gather information and ensure that platforms are keeping appropriate records.

In the event that the digital platform industry's efforts to combat misinformation and disinformation are insufficient, the ACMA would have the power to approve industry-made codes and make standards to ensure that platform providers prevent (and respond to) misinformation and disinformation. Codes and standards

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<sup>1</sup> *Explanatory Memorandum*, pp. 8–9.

approved by the ACMA would be subject to parliamentary scrutiny and could be disallowed by the Parliament.

The ACMA would be able to make rules which deal with media literacy plans to be published and maintained by the digital platforms, as well as risk management plans and complaints and dispute handling processes.

### **Making digital platforms responsible for the content on their services**

The bill does not propose that everyday Australians would be fined for social media posts, but instead puts the obligation on digital platforms to be responsible for the content they have on their services. The ACMA would be able to investigate platforms and companies, and individuals providing services to those platforms. The ACMA would not have the power to penalise or investigate individuals for the posts they make online.

### **Ensuring parliamentary oversight**

Rules, approved codes and standards made under the bill would be subject to parliamentary scrutiny and disallowance. These instruments would need to be accompanied by Explanatory Statements, including a statement of compatibility with human rights.

An independent triennial review of the operation would report to the Parliament, and include public consultation and an assessment of the legislation's impact on freedom of expression. The ACMA would also be required to provide an annual report on the operation of the bill.

### **Concluding comments**

The inquiry process conducted by parliamentary committees is a vital mechanism for the development and testing of public policy and legislation, and this inquiry has been no exception. Committees allow parliamentarians the chance to investigate the effects of proposed legislation, and for individuals to have their views placed on the public record.

The committee heard from a wide range of stakeholders from academia, religious groups, the digital platforms industry, the legal community, media groups, and human rights organisations.

The committee has also received many thousands of emails, submissions and phone calls from members of the public expressing their concerns at the claims they had heard about the bill.

The range of views on different elements of the bill show that a healthy debate on legislation which affects Australians is important to the functioning of our

democratic system. It is important that Australians are able to express their views on a wide variety of significant matters of policy.

However, some of the views put forward to the committee were deeply polarising, and some were highly offensive. A number of individuals and organisations declined to attend public hearings due to their concerns over the polarising views expressed about the bill, and the committee is aware of threats made to an organisation ahead of their appearance before the committee.

The committee takes the protection of witnesses and individuals and groups who make submissions seriously, and condemns any action which seeks to intimidate or threaten anyone who provides evidence. Any action which harms or penalises a witness due to their giving of evidence is a criminal offence which may be prosecuted in the courts.

The need for legislation to protect Australians from seriously harmful misinformation and disinformation, while protecting Australians' right to freedom of expression, security and participation in public affairs, is vital for our healthy democracy's ability to function.

While digital communications platforms have had a significant benefit on our lives, the platform providers must take more responsibility for the content they host, and work to minimise the harmful effects of misinformation and disinformation.



# Abbreviations and acronyms

AAP	Australian Associated Press
ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
AEC	Australian Electoral Commission
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AI	artificial intelligence
AMAN	Australian Muslim Advocacy Network
ASIO	Australian Security Intelligence Organisation
Bill	Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024
BVODs	broadcast video on demand
CBAA	Community Broadcasting Association of Australia
the Code	<i>Australian Code of Practice on Disinformation and Misinformation</i>
DIGI	Digital Industry Group
DITRDCA	Department of Infrastructure, Transport, Regional Development, Communications and the Arts
eSafety Commissioner	Office of the eSafety Commissioner
FTA	free-to-air [television]
Home Affairs	Department of Home Affairs
HRLC	Human Rights Law Centre
ICCPR	<i>International Covenant on Civil and Political Rights</i>
IGEA	Interactive Games & Entertainment Association
IPA	Institute of Public Affairs
Online Safety Act	<i>Online Safety Act 2021</i>
PCV	promotion of communal violence
PJCHR	Parliamentary Joint Committee on Human Rights
PMV	politically motivated violence

Privacy Act	<i>Privacy Act 1988</i>
Racial Discrimination Act	<i>Racial Discrimination Act 1975</i>
Scrutiny of Bills	Senate Standing Committee for the Scrutiny of Bills
SBS	Special Broadcasting Service
SVODs	subscription video on demand

# Chapter 1

## Introduction

1.1 On 19 September 2024, the Senate referred the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill) to the Environment and Communications Legislation Committee (the committee) for inquiry and report by 25 November 2024.<sup>1</sup>

### Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions by 30 September 2024.

1.3 The committee published 105 submissions which are listed in Appendix 2 and available on the committee's website. In addition, more than 8000 contributions from individuals were submitted to the committee, and a further 22 000 contributions were submitted through various campaigns. Representative samples of these are published on the committee's website as additional information to this inquiry.

1.4 Three public hearings were held in Canberra on 11 October 2024, 17 October 2024 and 11 November 2024. A list of witnesses who gave evidence at these hearings is available in Appendix 1.

1.5 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

### Acknowledgments

1.6 The committee acknowledges the significant public interest in this inquiry, and that polarising views and perspectives have been expressed about the bill and consultation process. The committee thanks the organisations and individuals that made written submissions, commented on the bill and appeared at the public hearings.

### Purpose of the bill

1.7 In her second reading speech for the bill, the Minister for Communications, the Hon Michelle Rowland MP (the Minister), outlined that the bill would provide the Australian Communications and Media Authority (ACMA) with:

... new powers to create transparency and accountability around the efforts of digital platforms to combat misinformation and disinformation on their

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<sup>1</sup> *Journals of the Senate*, No. 135, 19 September 2024, p. 4077.

services, while balancing the freedom of expression that is so fundamental to our democracy.<sup>2</sup>

1.8 The bill has three key objectives:

- to provide the ACMA with new regulatory powers to require digital communication platform providers to take steps to manage the risk that misinformation and disinformation on digital communications platforms poses in Australia;
- to increase transparency about the way in which digital communications platform providers manage misinformation and disinformation; and
- to empower users to identify and respond to misinformation and disinformation.<sup>3</sup>

1.9 The bill would provide the ACMA with new information-gathering, record keeping, code registration and standard making powers relating to digital communication platform providers.<sup>4</sup>

1.10 New obligations would be placed on digital platforms to increase their transparency with Australian users about how they handle misinformation and disinformation on their services.<sup>5</sup>

1.11 Notably, under these proposed arrangements, the ACMA's powers would be directed to digital communications platform providers and not individual end-users. The ACMA would not have a 'direct takedown power for individual content or particular accounts', except in the case of disinformation involving inauthentic behaviour (for example, coordinated bots, troll farms or fake accounts).<sup>6</sup>

1.12 The bill proposes to define 'misinformation' as the dissemination of content using a digital service where that content 'is reasonably verifiable as false, misleading or deceptive', is provided to one or more end-users in Australia, and where the provision of that content is 'reasonably likely to cause or contribute to serious harm'.<sup>7</sup>

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<sup>2</sup> The Hon Michelle Rowland MP, Minister for Communications, *House of Representatives Hansard*, 12 September 2024, p. 7.

<sup>3</sup> Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024, *Explanatory Memorandum*, p. 1.

<sup>4</sup> *Explanatory Memorandum*, p. 1.

<sup>5</sup> *Explanatory Memorandum*, p.1.

<sup>6</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), [Fact sheet - Communications Legislation Amendment \(Combating Misinformation and Disinformation\) Bill 2024](#), 12 September 2024, p. 2.

<sup>7</sup> *Explanatory Memorandum*, p. 44.

1.13 'Disinformation' is required to meet the same elements as misinformation, however, is distinguished by intent.<sup>8</sup> This is discussed further in Chapter 2 and Chapter 3.

### **Amendments passed by the House of Representatives**

1.14 On 7 November 2024, the House of Representatives passed several amendments to the bill. These included:

- amending the definition of 'professional news content' to also apply to news content produced by a person who is subject to the rules of the Community Radio Broadcasting Codes of Practice;
- requiring digital communication platform providers to publish information regarding their policy or policy approach for supporting access by researchers to data relating to misinformation and disinformation on the platform;
- providing the ACMA with the power to make digital platform rules to establish one or more data access schemes, permitting independent researchers to be given access to data held by digital communications platform providers in certain circumstances;
- requiring a review of the data access schemes rules; and
- clarifying that the triennial statutory review is an independent review.<sup>9</sup>

1.15 These amendments are outlined in further detail in Chapter 2 and the respective chapters of this report.

### **Scope and structure of the report**

1.16 This report comprises six chapters:

- Chapter 1 provides background to the bill, including its purpose, and the conduct of the inquiry. It provides contextual information relevant to the bill's development, including the voluntary *Australian Code of Practice on Misinformation and Disinformation*, and the Australian Government's consultation process on the 2023 Exposure Draft of the bill. The chapter also explores the general feedback received about the bill, including the views of individuals.
- Chapter 2 outlines the key provisions of the bill, including Government amendments passed by the House of Representatives on 7 November 2024.
- Chapter 3 canvasses submitter views on the bill's proposed scope and coverage, including definitional issues.
- Chapter 4 discusses views expressed about the proposed transparency obligations of digital communication platform providers.
- Chapter 5 outlines the ACMA's proposed regulatory powers under the bill.

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<sup>8</sup> *Explanatory Memorandum*, p. 45.

<sup>9</sup> *Supplementary Explanatory Memorandum*, p. 2.

- Chapter 6 concludes with the committee's views and recommendation.
- 1.17 The following section outlines the financial impact of the proposed measures in the bill, its compatibility with human rights and relevant parliamentary committee scrutiny.

### **Financial impact statement**

- 1.18 The Explanatory Memorandum outlines that the measures in the bill are expected to have a minor financial impact on Commonwealth expenditure. As part of the 2023–24 Budget, the ACMA was provided with \$7.78 million over four years from 2023–24 to 2026–27 for regulatory powers to combat misinformation and disinformation as contained in the bill.<sup>10</sup>

### **Human rights compatibility**

- 1.19 The Explanatory Memorandum stated that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>11</sup>
- 1.20 According to the Explanatory Memorandum, the bill would serve to positively affect several human rights, such as the right to security of the person, the right to participate in public affairs, the right to vote and be elected at genuine periodic elections, the right to be protected against discrimination, and the right to the highest attainable standard of physical and mental health.<sup>12</sup>
- 1.21 However, the Explanatory Memorandum stated that the bill limits the right to privacy and the right to freedom of expression. With regard to the right to privacy, the Explanatory Memorandum notes that the '[b]ill's regulatory regime ... burdens the right to privacy, to the extent that it imposes obligations on digital communications platform providers (and provides the ACMA with regulatory powers) that pertain to information disseminated on digital communication platforms'.<sup>13</sup>
- 1.22 The Explanatory Memorandum outlined that the bill's limitations on the right to privacy have been imposed in pursuit of a legitimate objective, are necessary and proportionate to the achievement of that objective, and have appropriate protections in place for individuals.<sup>14</sup>

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<sup>10</sup> Commonwealth of Australia, Australian Communications and Media Authority, *Portfolio Budget Statements: 2023–24*, p.153.

<sup>11</sup> *Explanatory Memorandum*, p. 5.

<sup>12</sup> *Explanatory Memorandum*, p. 7.

<sup>13</sup> *Explanatory Memorandum*, p. 16.

<sup>14</sup> *Explanatory Memorandum*, p. 15.

- 1.23 On the right to freedom of expression, the bill limits this right as it empowers the ACMA to require providers to take steps to manage the risk of misinformation and disinformation on their platforms.<sup>15</sup>
- 1.24 The Explanatory Memorandum explains that the six types of serious harms provided for in the bill 'align with the purposes for which international human rights law allows restrictions to be placed on freedom of expression'. This is because the measures in the bill are focused on systems and processes rather than the regulation of individual pieces of content, except in cases where disinformation involves inauthentic behaviour such as bots.<sup>16</sup>

## Relevant parliamentary committee scrutiny

### Consideration by the Parliamentary Joint Committee on Human Rights

- 1.25 The Parliamentary Joint Committee on Human Rights (PJCHR) scrutinises bills for compatibility with human rights, and considered the bill's engagement with human rights.
- 1.26 The PJCHR noted that, while the bill is directed towards a legitimate objective and has safeguards in place, many details are left to delegated legislation. The PJCHR stated that there is a risk that platforms could over-regulate content to avoid penalties:

It appears that the bill is directed towards a legitimate objective which is broadly of pressing and substantial concern, and would likely be rationally connected to (that is, capable of achieving) that objective. However, questions remain as to whether the scheme would constitute a proportionate limit on the right to freedom of expression and the right to privacy in practice. While the bill does establish several broad safeguards which would assist with the proportionality of the measure, and provide for regular review of the operation of the scheme, much of the detail of what the scheme would require providers to do would be set out in delegated legislation. Further, there may be a risk that, in practice, providers over-regulate content on their platforms in order to avoid the risk of a civil penalty for non-compliance with this scheme, meaning that the extent of the limitation on the right to freedom of expression (and privacy) may only become apparent as a matter of practice.<sup>17</sup>

- 1.27 The PJCHR suggested that:

- the bill be amended to require the ACMA to 'have regard to the right to freedom of expression, as recognised under international human rights law, in approving a code or determining a standard';

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<sup>15</sup> *Explanatory Memorandum*, p. 7.

<sup>16</sup> *Explanatory Memorandum*, p. 6. More information relating to human rights can be found in the bill's *Explanatory Memorandum*, from page 5.

<sup>17</sup> Parliamentary Joint Committee on Human Rights, [Scrutiny Report 9 of 2024](#), 10 October 2024, p. 91.

- consideration be given to whether the proposed scheme would appropriately protect content produced by 'citizen journalists' who are not subject to formalised editorial standards; and that
  - the statement of compatibility be updated to identify what, if any, remedy an individual may access if compliance, or purported compliance, with the proposed scheme resulted in a breach of their right to freedom of expression or privacy.<sup>18</sup>
- 1.28 The PJCHR did not seek a response from the Minister for Communications as much of the detail of the scheme would be set out in delegated legislation.
- 1.29 However, the Minister's response outlined that the bill provides that approved codes and standards are legislative instruments subject to parliamentary scrutiny and disallowance. The ACMA must also be satisfied that it 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 misinformation or disinformation on the platforms, and goes no further than reasonably necessary to provide that protection. These requirements are similar to those set out under Article 19(3) of the *International Covenant on Civil and Political Rights* (ICCPR).<sup>19</sup>
- 1.30 In relation to the statement of compatibility, the Minister outlined that the statement will be updated to explain the remedies available, if the actions of a platform constitute a breach of either an individual's right to freedom of expression or right to privacy (as recognised under international law).<sup>20</sup>
- 1.31 The PJCHR thanked the Minister for her response and reiterated its recommendations, and noted that it will assess the compatibility of any future legislative instruments made pursuant to this scheme.
- 1.32 With respect to the preparation of a statement of compatibility, the PJCHR outlined that while its preparation is an important element of supporting the legislative scrutiny process, the 'requirement to prepare a statement of compatibility does not, in and of itself, constitute a sufficient safeguard to protect human rights, particularly as it does not require the legislation be compatible with human rights'.<sup>21</sup>
- 1.33 The PJCHR recommended:

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<sup>18</sup> Parliamentary Joint Committee on Human Rights, [Scrutiny Report 9 of 2024](#), 10 October 2024, p. 92.

<sup>19</sup> Minister for Communications, Parliamentary Joint Committee on Human Rights, Ministerial response, *Report 10 of 2024*; [2024] AUPJCHR 82, p. 15.

<sup>20</sup> Minister for Communications, Parliamentary Joint Committee on Human Rights, Ministerial response, *Report 10 of 2024*; [2024] AUPJCHR 82, p. 18.

<sup>21</sup> Parliamentary Joint Committee on Human Rights, *Report 10 of 2024*; [2024] AUPJCHR 77, p. 82.

The committee recommends that consideration be given to amending the bill to require the Australian Communications and Media Authority (ACMA) to establish a complaints mechanism to handle complaints with respect to breaches of human rights arising from the proposed scheme.<sup>22</sup>

### **Consideration by the Senate Standing Committee for the Scrutiny of Bills**

1.34 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) assesses bills against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, the rule of law and on parliamentary scrutiny. The Scrutiny of Bills Committee reviewed the bill, seeking the Minister's advice on:

- why significant details had been left to delegated legislation;
- whether more detail could be included in the primary legislation;
- why there is no requirement to make rules regarding misinformation and disinformation complaints;
- whether all of the ACMA's decisions made under the rules should be subject to merits review, unless the ACMA specifically excludes merits review in individual cases;
- why privacy protections specified in the Explanatory Memorandum are not included in the bill;
- whether the definition of 'professional news content' is overly narrow;
- why it is appropriate to leave to codes and standards all processes by which participants in a digital platform industry are to prevent or respond to misinformation or disinformation, including why there is no requirement about what a code or standard must contain; and
- whether the ACMA should be required to be satisfied that a misinformation code or standard appropriately balances protecting the community from serious harm with the right to freedom of expression.<sup>23</sup>

1.35 With respect to significant details, such as obligations relating to risk management, media literacy plans, complaints and dispute handling, and record keeping being left to delegated legislation, the Minister's response outlined various reasons for why this would be specified in the rules. This includes:

- rules would more appropriately account for differences between digital platform providers, taking into account differences in respect to their user-interfaces, the users, and the content shared;
- to retain flexibility to consider how the system is operating in practice, and to respond to the evolving risk landscape; and

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<sup>22</sup> Parliamentary Joint Committee on Human Rights, Report 10 of 2024; [2024] AUPJCHR 77, p. 82.

<sup>23</sup> Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee), *Scrutiny Digest 13 of 2024*, pp. 34–35, 37–38, and 43.

- to provide greater flexibility for the digital communications platforms industry, particularly as the ACMA gains a more thorough understanding of the sector through its information-gathering powers.<sup>24</sup>

1.36 Regarding the content requirements of a code or standard, the Minister explained that the bill does not set out all the matters which must be in a code, 'as the nature of the risk and the appropriate measures will depend on the relevant industry sector and class of digital communication platform provider'.<sup>25</sup>

1.37 In relation to the ACMA being satisfied that a misinformation code or standard appropriately balances the protection of the community from serious harm with freedom of expression, the Minister stated:

Where it approves a misinformation code or determines a misinformation standard, the ACMA will have a legal obligation to prepare a statement of compatibility with Australia's international human rights obligations. In practice, this means that the ACMA will need to consider Australia's international human rights obligations, including those relating to freedom of expression, in deciding whether to approve a code or make a standard.

In the context of this legislation, any attempt to codify some aspects of that consideration, with reference [to] a specified human right, is likely to create legal uncertainty, with real risks of legal challenges and unintended consequences.

Codes and standards are also subject to parliamentary scrutiny and disallowance.<sup>26</sup>

1.38 The Scrutiny of Bills Committee outlined that it considered the Minister's response had largely addressed its concerns regarding the use of delegated legislation in relation to risk management and media literacy plans, however retained its scrutiny concerns with respect to providers implementing misinformation complaints and dispute handling processes. It recommended that consideration be given to requiring providers to implement and maintain these processes, or provide that rules are made to establish this.<sup>27</sup>

1.39 With respect to protecting the right to freedom of expression, the Scrutiny of Bills Committee expressed concern that the proposed safeguards in relation to the approval of codes or making of standards 'may not be sufficient to fully protect the right to freedom of expression'. It stated:

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<sup>24</sup> Minister for Communications, *Ministerial response to the Senate Scrutiny of Bills Scrutiny Digest 13 of 2024*, [pp. 28–57].

<sup>25</sup> Minister for Communications, *Ministerial response to the Senate Scrutiny of Bills Scrutiny Digest 13 of 2024*, [p. 53].

<sup>26</sup> Minister for Communications, *Ministerial response to the Senate Scrutiny of Bills Scrutiny Digest 13 of 2024*, [p. 55].

<sup>27</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 14 of 2024*; [2024] AUSStaCSBSD 211, pp. 99–100.

While the committee [Scrutiny of Bills committee] notes that the bill includes safeguards, it cautions that the proposed scheme has the potential to unduly trespass on personal rights and liberties by potentially acting as a chilling effect on freedom of expression, as there are incentives for providers to remove content that might constitute misinformation or disinformation, while there is no incentive for providers to respect the right to freedom of expression...

To better protect the right to freedom of expression the committee recommends that consideration be given to amending the bill to require the ACMA to be satisfied that a misinformation code or standard appropriately balances the importance of protecting the community from serious harm with the right to freedom of expression.<sup>28</sup>

## Background and context to the bill

- 1.40 This section outlines the context to the bill's development. It provides an overview of growing concerns about the impact of misinformation and disinformation on digital communication platforms, the Australian Government's response in related reviews and the outcomes of consultation on the 2023 Exposure Draft.
- 1.41 This section also outlines the broader policy and regulatory framework in which the bill operates.

## Australians' increasing concern about the impact of misinformation and disinformation

- 1.42 With the growth in the use of digital platforms, research has indicated that Australians are increasingly concerned about the information they access online. For example, the ACMA's September 2024 report on the adequacy of the *Australian Code of Practice on Misinformation and Disinformation* found that 75 per cent of Australians were 'concerned' about misinformation and disinformation—an increase from 69 per cent in 2022.<sup>29</sup>
- 1.43 Similarly, the Australian Media Literacy Alliance's *Adult Media Literacy 2024* report stated that four in five Australians want the spread of misinformation on social media to be addressed in Australia. This was an increase of six per cent from the 2021 report.<sup>30</sup>
- 1.44 These findings are consistent with international trends. The Reuters Institute *Digital News Report 2024*, an international survey of comparative data on media usage in 47 countries, found that concerns about 'what is real and what is fake'

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<sup>28</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 14 of 2024*; [2024] AUSStaCSBSD 211, pp. 107–108.

<sup>29</sup> Australian Communications and Media Authority (ACMA), *Digital platforms' efforts under voluntary efforts to combat misinformation and disinformation: Third report to government*, September 2024, p. 1.

<sup>30</sup> Tanya Notley et al, [Adult Media Literacy in 2024: Australian Attitudes, Experiences and Needs](#), Australian Media Literacy Alliance, August 2024, p. 15.

with respect to online news had risen by three percentage points in the last year, with around six in ten (59 per cent) of people stating that they are concerned.<sup>31</sup>

1.45 Australians are now among the most concerned consumers about misinformation, with levels of concern similar to concerns in the United States, and the United Kingdom, and behind only Portugal.<sup>32</sup>

### **The findings of the ACCC's Digital Platforms Inquiry**

1.46 In December 2017, the then-Treasurer, the Hon Scott Morrison MP, directed the Australian Competition and Consumer Commission (ACCC) to conduct an inquiry into digital platforms. As part of the inquiry's terms of reference, the ACCC examined the impact of digital platforms on consumers, businesses, and the quality of news and journalism.

1.47 The inquiry focused on Google and Facebook as the two largest and most used digital platforms in Australia. The inquiry's final report in 2019 noted the 'opaque operations' of digital platforms, and that these platforms 'act as gateways' to Australian consumers.<sup>33</sup> The ACCC argued that 'where digital platforms perform comparable functions to media businesses, they should be regulated similarly'.<sup>34</sup> The ACCC found that algorithms also pose risks for consumers by encouraging the spread of misinformation and disinformation.<sup>35</sup>

1.48 In its final report, the ACCC made several recommendations relevant to this bill. These include:

- that digital platforms establish an industry code to govern the handling of complaints about disinformation;
- that an independent regulator, like the ACMA, should be directed to monitor the voluntary initiatives of digital platforms to enable users to identify the reliability, trustworthiness and source of news content featured on their services; and that
- the regulator should also be empowered to obtain data and information from digital platforms, publicly report on its findings and make recommendations in relation to regulatory action if voluntary initiatives are ineffective.<sup>36</sup>

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<sup>31</sup> Reuters Institute, [Digital News Report 2024](#), p. 10.

<sup>32</sup> ACMA, *Digital platforms' efforts under the Australian Code of Practice of Disinformation and Misinformation: Second report to government*, July 2023, p. 1.

<sup>33</sup> Australian Competition and Consumer Commission (ACCC), *Digital Platforms Inquiry: Final Report*, June 2019, pp. 1 and 4.

<sup>34</sup> ACCC, *Digital Platforms Inquiry: Final Report*, June 2019, p. 2.

<sup>35</sup> ACCC, *Digital Platform Services Inquiry Interim Report No. 6 – Social media services in Australia*, March 2023, p. 156.

<sup>36</sup> ACCC, *Digital Platforms Inquiry: Final Report: Executive Summary*, June 2019, pp. 33–34.

1.49 The ACCC also recommended greater investment in the approach and delivery of digital media literacy resources and training, including in Australian schools.<sup>37</sup>

### **The Australian Code of Practice on Disinformation and Misinformation**

1.50 In December 2019 as part of the then Australian Government's response to the ACCC's Digital Platforms Inquiry final report, it requested that major digital platforms develop a voluntary code of conduct to address disinformation and news quality.<sup>38</sup> The ACMA was tasked with overseeing the code's development, report on platforms' measures as well as the broader impacts of disinformation in Australia.<sup>39</sup>

1.51 In line with the ACMA's code development practice, the Digital Industry Group (DIGI), a digital industry association, worked with eight digital service providers to develop the voluntary *Australian Code of Practice on Disinformation and Misinformation* (the Code).<sup>40</sup> The Code aims to manage the risks associated with disinformation (intentionally misleading content) and misinformation (false content spread without malicious intent) on digital platforms.

1.52 Signatories opt into commitments under the Code, including two mandatory commitments to implement measures to reduce the risk of harms that may arise from misinformation and disinformation and publishing an annual transparency report.<sup>41</sup>

1.53 DIGI can accept complaints about platforms' breaches of the Code, and can investigate and withdraw a company from the Code if necessary. The aim of the complaints facility is to 'resolve the complaints, so as to have a positive impact on misinformation and disinformation in Australia' rather than to penalise the platform.<sup>42</sup>

1.54 As of November 2024, the Code currently has nine signatories: Adobe, Apple, Google (including YouTube), Meta (formerly Facebook), Microsoft (LinkedIn), Redbubble, TikTok, Twitch and Legitimate.<sup>43</sup>

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<sup>37</sup> ACCC, *Digital Platforms Inquiry: Final Report: Executive Summary*, June 2019, pp. 33–34.

<sup>38</sup> The Treasury, [Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#), 12 December 2019, p. 7.

<sup>39</sup> The Treasury, [Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#), 12 December 2019, p. 7.

<sup>40</sup> Digital Industry Group (DIGI), *Submission 79*, p. 1.

<sup>41</sup> DIGI, [About the Code](#) (accessed 7 November 2024).

<sup>42</sup> DIGI, [Complaints](#) (accessed 18 October 2024).

<sup>43</sup> DIGI, [Signatories](#) (accessed 7 November 2024).

- 1.55 However, some major platforms with a significant Australian user base are not signatories.<sup>44</sup> These include Reddit (1.8 million Australian monthly active users), Snapchat (eight million Australian monthly active users), X (formerly Twitter) (2.9 million Australian monthly active users), and WeChat (400 000 Australian monthly active users).<sup>45</sup>
- 1.56 In November 2023, the Code's independent Complaints Sub-Committee withdrew X's signatory status. This action followed X's refusal to cooperate in an investigation or take corrective action after a complaint was lodged regarding X's decision to close, and leave closed, accessible channels for the public to report misinformation and disinformation on the platform during the Australian Voice to Parliament referendum.<sup>46</sup>
- 1.57 The ability for users to report misinformation and disinformation is a key feature of the Code.

### **The ACMA's reports on the adequacy of the Code**

- 1.58 The ACMA has provided three reports to the Australian Government on the adequacy of the Code since its commencement.
- 1.59 The ACMA's first report in June 2021 recommended that it should be provided with information-gathering and record keeping powers, and reserve regulatory powers to register codes and set standards. The ACMA also recommended that formal regulatory options should be considered, 'particularly for platforms that choose not to participate in the Code or reject the emerging consensus on the need to address disinformation and misinformation'.<sup>47</sup>
- 1.60 The ACMA argued that the current self-regulatory approach 'may prove insufficient to incentivise broader behavioural change across industry', noting that:
- compliance with the Code is uncertain given the data provided by platforms;
  - uncertainty that current deficiencies with the Code will be addressed by the industry in its 12-month review;
  - there are a range of non-signatories to the Code; and that
  - usage of platforms may expand rapidly and with new services introduced, without these potential new services being brought quickly into the Code's remit.<sup>48</sup>

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<sup>44</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 20.

<sup>45</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 21.

<sup>46</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p.12.

<sup>47</sup> ACMA, [Adequacy of digital platforms disinformation and news quality measures](#), June 2021, p. 4.

<sup>48</sup> ACMA, *Adequacy of digital platforms disinformation and news quality measures*, June 2021, pp. 80–81.

- 1.61 In July 2023, the ACMA's second report found that platforms' voluntary 'transparency reports are not working to provide transparency about signatories' current and proposed measures under the Code'.<sup>49</sup> At this time of this report, DITRDCA consultation on the Exposure Draft for the 2023 bill was occurring (discussed below).
- 1.62 In September 2024, the ACMA's third report noted that the transparency reports of digital platforms subject to the Code were 'inconsistent', with 'patchy' data, and that it was 'difficult to track the progress of measures against the relevant outcome'. The report also noted that the implementation of regulatory responses to online harm internationally is starting to impact digital platform behaviour, citing novel regulatory approaches in the European Union and United Kingdom to improve accountability.<sup>50</sup>
- 1.63 This is discussed in more detail in Chapter 4.

### **Release of the 2023 Exposure Draft of the bill**

- 1.64 In January 2023, the Minister announced that the Australian Government would introduce laws to provide the ACMA with new powers to combat online misinformation and disinformation.<sup>51</sup>
- 1.65 In June 2023, an Exposure Draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (the Exposure Draft of the bill) was released for public consultation.<sup>52</sup>
- 1.66 The Exposure Draft of the bill built upon the previous Government's commitment to provide the ACMA with greater powers to 'combat harmful disinformation and misinformation online'. In March 2022, the Hon Paul Fletcher MP, the former Minister for Communications, Urban Infrastructure, Cities and the Arts (the former minister) foreshadowed introducing 'legislation this year to combat harmful disinformation and misinformation online', and stated that such legislation would provide ACMA with 'new information-gathering powers to incentivise greater platform

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<sup>49</sup> ACMA, [Digital platforms' efforts under the Australian Code of Practice on Disinformation and Misinformation, second report to government](#), July 2023, p. 3.

<sup>50</sup> ACMA, [Third report to government on digital platforms' efforts under voluntary arrangements](#), September 2024, p. 7. The report outlines developments including the impact of the European Union's *Digital Services Act* that places obligations on large online platforms and search engines including transparency reporting obligations and identification of systems risks related to public security and electoral processes among other matters. The United Kingdom's *Online Safety Act 2023* also places a new duty of care for online platforms to remove illegal content (including foreign interference) and take down material that breaches their terms of service.

<sup>51</sup> DITRDCA, [New ACMA powers to combat misinformation and disinformation](#) (accessed 2 October 2024).

<sup>52</sup> DITRDCA, [New ACMA powers to combat misinformation and disinformation](#) (accessed 2 October 2024).

transparency' as well as be provided "'reserve powers' to register and enforce industry codes or make industry standards".<sup>53</sup>

1.67 DITRDCA undertook two phases of consultation on the Exposure Draft in 2023 and 2024.

### **First phase: public consultation**

1.68 The first phase consultation process included a call for public submissions on the Exposure Draft as well as targeted stakeholder roundtables with the digital communications platforms industry, civil rights groups, academia, religious organisations, and the media and broadcasting sectors. Several stakeholder roundtable sessions were held during this eight-week consultation period.<sup>54</sup>

1.69 The consultation process for the Exposure Draft received more than 24 000 responses, including 2418 public submissions.<sup>55</sup>

1.70 The following primary concerns were identified during the consultation:

- freedom of expression and religious freedom—concern that the powers would unduly restrict Australians' implied right to freedom of political communication and would 'cancel' religious content online;
- 'government overreach' and censorship—concern that the Government would censor Australians who held contrary views;
- transparency and oversight—concern about a lack of clarity in how digital communications platforms treat the content they host, and how decisions made under a future code or standard would be communicated to users. Concerns were also raised about how the ACMA would make decisions in exercising its powers; and
- workability for platforms—the digital communications platform industry held concerns about how it would be able to comply with the powers, particularly with regard to the definitions provided in the exposure draft of the bill.<sup>56</sup>

### **Second phase: targeted consultation**

1.71 The second phase consultation process on the Exposure Draft of the bill occurred in April and July 2024 and involved targeted consultation with key industry and other stakeholders on potential changes to the draft bill following feedback from the first phase consultation process.<sup>57</sup>

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<sup>53</sup> The Hon Paul Fletcher MP, Minister for Communications, Urban Infrastructure, Cities and the Arts, [Media Release](#), 21 March 2022 (accessed 8 October 2024).

<sup>54</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 9.

<sup>55</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 10.

<sup>56</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 10.

<sup>57</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 10.

1.72 These potential changes included narrowing the scope of harms in order to better protect freedom of speech and religious expressions, refining provisions regarding platform transparency and accountability requirements, and improved transparency and accountability measures relating to the ACMA, including a triennial review of the legislative framework and annual reporting by the ACMA to the Parliament.<sup>58</sup>

1.73 A revised bill was provided to stakeholders in July 2024.<sup>59</sup>

### **Key changes to the bill following consultation on the Exposure Draft**

1.74 The consultation process on the Exposure Draft informed the drafting of the bill as introduced, to refine definitions, improve workability, and reinforce safeguards for freedom of expression. These are discussed in more detail in the following chapters, and include:

#### **Reinforced protections to safeguard freedom of speech**

- the scope of 'serious harms' was narrowed in the bill to ensure greater alignment with Australia's obligations under international human rights law;
- the excluded categories of content were refined, to encompass the reasonable dissemination of content for any academic, artistic, scientific or religious purpose. Notably, the exclusions for government-authorised content and authorised electoral matter were removed;
- explicit provisions were included 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); and
- the proposed information-gathering powers of the ACMA were clarified to ensure that the ACMA cannot 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.<sup>60</sup>

#### **Improved workability of the bill**

- the definitions of misinformation and disinformation were refined to require that the content in question must be reasonably verifiable as false, misleading or deceptive; and

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<sup>58</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 10.

<sup>59</sup> DITRDCA, *Online misinformation and disinformation reform: Impact Analysis*, p. 10.

<sup>60</sup> DITRDCA, *Fact sheet - Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024*, 12 September 2024, p. 2.

- the definition of disinformation was amended to include 'false, misleading or deceptive information disseminated via inauthentic behaviour'.<sup>61</sup>

### **Strengthened transparency and accountability for the ACMA and digital platforms**

- core upfront obligations were placed on the platforms to publish a current media literacy plan, a risk assessment report, and policies or information on their approach to addressing misinformation and disinformation;
- the ACMA would be able to make digital platform rules (disallowable by Parliament) with additional transparency requirements such as a complaints and dispute handling process for misinformation and disinformation complaints, risk management, and risk assessment; and
- greater Parliamentary oversight was incorporated through triennial reviews of the bill's framework, annual reporting by the ACMA, and for codes approved by the ACMA to be subject to parliamentary scrutiny and disallowance.<sup>62</sup>

### **Procedures to be observed by Senate Committees for the protection of witnesses**

- 1.75 On 11 November 2024, the Australian Jewish Association notified a committee member of a serious threat made on a social media platform which was directly linked to their appearance before the committee. The committee member raised the matter with the committee prior to the public hearing. This matter was also addressed during the public hearing.
- 1.76 The committee takes the protection of witnesses seriously, and condemns any action which seeks to intimidate or threaten anyone who provides evidence as part of the inquiry process.
- 1.77 The *Parliamentary Privileges Act 1987* provides some of the legal protections for senators, witnesses and others. In particular, any action harming or penalising a witness, or depriving them of a benefit, in consequence of their giving or proposing to give evidence, is a criminal offence which may be prosecuted in the courts.<sup>63</sup>
- 1.78 The Senate also has the power to punish contempts under section 49 of the Constitution.

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<sup>61</sup> DITRDCA, *Fact sheet - Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*, 12 September 2024, p. 2.

<sup>62</sup> DITRDCA, *Fact sheet - Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*, 12 September 2024, p. 2.

<sup>63</sup> *Parliamentary Privileges Act 1987*, s. 12.

- 1.79 Under Privilege Resolution 6, the Senate has declared that the following matters may constitute a contempt of the Senate:

**Interference with witnesses**

(10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

**Molestation of witnesses**

(11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

- 1.80 Privilege Resolution 1 provides the procedures to be observed by Senate committees for the protection of witnesses. This resolution states that:

18. Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

- 1.81 Due to the serious nature of the threat made to the Australian Jewish Association, which may also constitute a criminal offence under other state or Commonwealth laws, the committee determined to refer the matter to the Australian Federal Police (AFP).
- 1.82 The committee takes this opportunity to report to the Senate that, as the matter has been referred to the AFP, the committee will refrain from further action at this time. This accords with the principles declared by the Senate of having regard to other remedies at law before resorting to the use of its contempt powers.
- 1.83 The committee will consider, once any AFP investigation is finalised, whether to report the matter to the Senate as a possible contempt.
- 1.84 The committee notes the right of individual Senators to pursue this matter separately.



# Chapter 2

## Key provisions of the bill

- 2.1 This chapter outlines the key provisions of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill). This chapter includes an overview of the main amendments proposed in the bill, including:
- a brief overview of the bill's key provisions;
  - safeguards contained in the bill, including the threshold for content which would engage the bill's provisions set through definitions and excluded dissemination;
  - digital services in scope of the bill;
  - transparency obligations for digital platforms;
  - the proposed complaints handling processes in the bill;
  - proposed powers for the Australian Communications and Media Authority (ACMA), including information-gathering and record keeping powers;
  - enforcement provisions; and
  - other key provisions.
- 2.2 This chapter also outlines the amendments to the bill, passed by the House of Representatives on 7 November 2024.
- 2.3 Views on the key provisions of the bill, as well as broader perspectives on the issues raised by the bill, are set out in the remaining chapters of this report.

### Structure of the bill

- 2.4 The bill comprises two schedules. The main amendments contained in Schedule 1 would introduce a new Schedule 9 (Digital Communications Platforms) into the *Broadcasting Services Act 1992*. Schedule 2 would make a series of consequential amendments and transitional provisions to the *Broadcasting Services Act 1992* and other related acts, including the *Australian Communications and Media Authority Act 2005*, the *Online Safety Act 2021*, and the *Telecommunications Act 1997*.<sup>1</sup>
- 2.5 This chapter focuses on the main substantive amendments set out in Schedule 1.

### Overview of main amendments

- 2.6 The bill proposes to amend the *Broadcasting Services Act 1992* to impose core obligations on digital communications providers to:

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<sup>1</sup> *Explanatory Memorandum*, p. 23.

- assess risks relating to misinformation and disinformation on their platforms and publish a report of the outcomes of that assessment;
- publish their policy or policy approach in relation to misinformation and disinformation; and
- publish a media literacy plan setting out the measures the provider will take to enable end-users of their platforms to better identify misinformation and disinformation.<sup>2</sup>

2.7 The bill would contain various built-in safeguards and proposes restrictions on its scope and coverage:

The intent of the bill is to set a high and targeted threshold for the definition of misinformation and disinformation. It does not intend to cover *all* dissemination of content that may be considered false, but rather, dissemination of content that is verifiably false, misleading or deceptive, and causing or contributing to serious harm.<sup>3</sup>

2.8 The bill would also provide the ACMA with powers to:

- obtain information and documents relating to misinformation and disinformation from digital communications platform providers;
- make rules requiring digital communications platform providers to make and retain records relating to misinformation and disinformation, and to prepare reports with information contained in those records;
- approve and register enforceable misinformation codes developed by sections of the digital platforms industry, setting out the measures those sections of the industry will take to reduce the risk of misinformation and disinformation;
- in certain circumstances, determine misinformation standards for sections of the digital platforms industry (for example, if codes do not adequately protect the Australian community from misinformation and disinformation);
- make rules requiring digital communications platform providers to implement and maintain a process for handling complaints and resolving disputes about misinformation and disinformation; and
- publish information relating to misinformation and disinformation.<sup>4</sup>

2.9 The bill's Explanatory Memorandum stated that:

The purpose of these new powers is to promote transparency and hold digital communications platform providers to account for the effectiveness

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<sup>2</sup> *Explanatory Memorandum*, pp. 23–24.

<sup>3</sup> *Explanatory Memorandum*, p. 2. Emphasis in original.

<sup>4</sup> *Explanatory Memorandum*, p. 24.

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of actions taken by them to counter the spread of misinformation and disinformation on their services.<sup>5</sup>

- 2.10 The ACMA would be able to enforce compliance with approved industry codes, industry standards, digital platform rules and obligations on digital communications platform providers. These include obligations to provide information to the ACMA.<sup>6</sup>
- 2.11 A range of enforcement mechanisms would be available to the ACMA, including civil penalties, remedial directions, infringement notices and formal warnings, depending on the particular provision.<sup>7</sup>
- 2.12 The ACMA would have the ability to make digital platform rules applying generally to digital communications platform providers. These rules could apply to all digital communications platform providers, a class, a section or sections of the digital platforms industry.<sup>8</sup>
- 2.13 The digital platform rules would be a legislative instrument and therefore subject to parliamentary disallowance. The rules would be required to be accompanied by a statement of compatibility with human rights as set out in any Explanatory Statements to the rules.<sup>9</sup>
- 2.14 The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) explained that the bill does not provide the ACMA with any powers to take individual pieces of content or user accounts down. The DITRDCA outlined that the bill proposes to take a 'system level approach', and digital platforms would be responsible for managing content on their services.<sup>10</sup>
- 2.15 Amendments passed by the House of Representatives on 7 November 2024 would broaden the scope of 'professional news content' to include community broadcasting, and included proposed powers for the ACMA to make digital platform rules relating to data access schemes.
- 2.16 The amendments would also provide for a review of the operation of the data access schemes as 'soon as possible after the first anniversary' of

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<sup>5</sup> *Explanatory Memorandum*, p. 24.

<sup>6</sup> *Explanatory Memorandum*, p. 24.

<sup>7</sup> *Explanatory Memorandum*, p. 24.

<sup>8</sup> *Explanatory Memorandum*, p. 132.

<sup>9</sup> *Explanatory Memorandum*, p. 132.

<sup>10</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), *Submission 74*, p. 4.

commencement, and clarified that the proposed triennial statutory review must be independent.<sup>11</sup>

### **Key safeguards for freedom of expression contained in the bill**

- 2.17 The bill contains a number of in-built safeguards to protect freedom of expression, including through definitions of key concepts to legislate limits on the bill's scope, and setting out categories of excluded dissemination. These are discussed in this section.
- 2.18 As noted above, and in the previous chapter, the DITRDCA stated that the bill's proposed definitions set a high threshold for the content in scope, to ensure that the powers and processes set out in the bill 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'.<sup>12</sup>

### **Definitions of misinformation and disinformation**

- 2.19 The bill proposes to define 'misinformation' as the dissemination of content using a digital service where that content 'contains information that is reasonably verifiable as false, misleading or deceptive', is provided to one or more end-users in Australia, and where the provision of the content on the service is 'reasonably likely to cause or contribute to serious harm'.<sup>13</sup>
- 2.20 The proposed obligations on digital communications platform providers in relation to misinformation and disinformation on their platforms, and the ACMA's regulatory powers in relation to misinformation and disinformation, would not cover 'excluded dissemination'.<sup>14</sup> Excluded dissemination is discussed later in this chapter.
- 2.21 The Explanatory Memorandum set out the matters that could be considered when determining whether information is 'reasonably verifiable as false, misleading or deceptive'. This could include whether the information has been fact-checked by a third-party organisation, expert opinions or advice, or by verifying claims against multiple reliable and independent sources.<sup>15</sup>
- 2.22 The Explanatory Memorandum provided that 'information' contained in content is intended to include 'opinions, claims, commentary and invective'.<sup>16</sup>

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<sup>11</sup> *Supplementary Explanatory Memorandum*, p. 2.

<sup>12</sup> DITRDCA, *Submission 74*, p. 8.

<sup>13</sup> *Explanatory Memorandum*, p. 44.

<sup>14</sup> *Explanatory Memorandum*, p. 62.

<sup>15</sup> *Explanatory Memorandum*, p. 44.

<sup>16</sup> *Explanatory Memorandum*, p. 44.

- 2.23 'Disinformation' is required to meet the same elements as misinformation, however, is distinguished by intent. Disinformation is intended to capture misinformation where there are grounds to suspect that the person disseminating, or causing the dissemination, of the content 'intends to deceive another person'.<sup>17</sup>
- 2.24 The proposed definition of 'disinformation' may apply where 'the dissemination involves inauthentic behaviour' which could include content disseminated by automated programs, the use of 'bots', fake social media accounts, as well as coordinated behaviour such as manipulation of platform algorithms.<sup>18</sup>
- 2.25 As set out in the Explanatory Memorandum:
- In practical terms, digital communications platform providers will need to identify misinformation or disinformation themselves, including identifying content on their platforms that contains information that is reasonably verifiable as false, misleading or deceptive ...<sup>19</sup>
- 2.26 To be considered misinformation or disinformation under the bill, the provision of content on the digital service 'must be reasonably likely to cause or contribute' to serious harm. For harm to be serious, it must have 'significant and far-reaching consequences for the Australian community or a segment of the Australian community; or severe consequences for an individual in Australia'.<sup>20</sup> Further details are set out below.

### **Definition of serious harm**

- 2.27 The bill sets out six discrete categories of harm which 'reflect the most serious consequences that the spread of misinformation and disinformation can have for the Australian community'. Dissemination of content would not be considered misinformation or disinformation unless it is reasonably likely to cause or contribute to 'serious harm' as defined in the bill. These categories of harm are:
- harm to the operation or integrity of a Commonwealth, State, Territory or local government electoral or referendum process;
  - harm to public health in Australia, including to the efficacy of preventative health measures in Australia;
  - vilification of a group in Australian society distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, national

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<sup>17</sup> *Explanatory Memorandum*, p. 45. Disinformation includes disinformation by or on behalf of a foreign power, whether initiated by a foreign power, or by an individual domestic actor with mal-intent.

<sup>18</sup> *Explanatory Memorandum*, pp. 60–61.

<sup>19</sup> *Explanatory Memorandum*, p. 44.

<sup>20</sup> *Explanatory Memorandum*, p. 16.

- or national or ethnic origin, or vilification of an individual because of a belief that the individual is a member of such a group;
- intentionally inflicted physical injury to an individual in Australia;
  - imminent damage to critical infrastructure, or disruption of emergency services in Australia; or
  - imminent harm to the Australian economy, including harm to public confidence in the banking system or financial markets.<sup>21</sup>
- 2.28 In order to apply, the six categories of 'serious harm' must also have 'significant and far-reaching consequences for the Australian community or a segment of the Australian community' or severe consequences for an individual in Australia.
- 2.29 As outlined in the Explanatory Memorandum, DITRDCA explained that these types of serious harm 'align with the purposes for which the right to freedom of expression may be restricted, under international human rights law'.<sup>22</sup>
- 2.30 The Explanatory Memorandum set out specific examples of harm from misinformation and disinformation. For example, in relation to harm to public health in Australia, the Explanatory Memorandum provided examples of misinformation and disinformation including citing a study of the most popular social media articles in 2018–19 about the four most common types of cancer. The study found that one in three of the articles contained 'false, inaccurate or misleading information' including promoting unproven treatments as alternatives to those studies had found to be beneficial.<sup>23</sup>
- 2.31 In relation to vilification of a group or member of a group, the Explanatory Memorandum cited a 2015 disinformation campaign created by fake accounts, 'purportedly owned by Muslim extremists' posting messages about 'taking over Denmark', which subsequently incited anti-Muslim sentiment.<sup>24</sup>
- 2.32 The Explanatory Memorandum also provided examples of serious harm to infrastructure and emergency services underscoring the tangible risks posed by misinformation and disinformation. This included misleading information about the location of bushfires, leading people to make dangerous decisions based on incorrect data and unnecessarily diverting emergency services resources.<sup>25</sup>

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<sup>21</sup> *Explanatory Memorandum*, pp. 46–58.

<sup>22</sup> *Explanatory Memorandum*, p. 41.

<sup>23</sup> *Explanatory Memorandum*, pp. 48–49.

<sup>24</sup> *Explanatory Memorandum*, p. 50.

<sup>25</sup> *Explanatory Memorandum*, pp. 54–55.

### Excluded dissemination

- 2.33 As mentioned earlier, the proposed obligations imposed on digital communication platform providers and the ACMA's regulatory powers in relation to misinformation and disinformation would not cover 'excluded dissemination'.
- 2.34 The Explanatory Memorandum stated that these exclusions would ensure that any restriction on the right to freedom of expression would be 'reasonable, necessary and proportionate to the achievement of a legitimate objective – that is, the objective of protecting Australians from serious harm ...'<sup>26</sup>
- 2.35 Content disseminated online, but which would be excluded from the bill's provisions, includes:
- content that would reasonably be regarded as parody or satire;
  - professional news content; and
  - reasonable dissemination of content for any academic, artistic, scientific or religious purpose.<sup>27</sup>
- 2.36 The Explanatory Memorandum outlined the various reasons for these proposed exclusions. With respect to content reasonably regarded as parody or satire, end-users would 'not generally perceive and act upon that content as if it were authoritative or factual'.<sup>28</sup>
- 2.37 Professional news content is proposed to be excluded so as not to 'infringe on the independence of the media', and to recognise that professional news content is subject to the industry's own separate and recognised editorial standards.<sup>29</sup>
- 2.38 In order for professional news content to be excluded from the provisions of the bill, it must be produced by a person who produces or publishes online; is subject to certain professional rules; and has editorial independence from the subjects of the news sources' news coverage.<sup>30</sup> Amendments passed by the House of Representatives amended the proposed definition of 'professional news content' to also apply to news content produced by a person who is subject to the rules of the Community Radio Broadcasting Codes of Practice.<sup>31</sup>
- 2.39 The Explanatory Memorandum stated that with respect to the exclusion of 'reasonable dissemination of content for any academic, artistic, scientific or religious purpose', this is intended to sit alongside similar exclusions provided

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<sup>26</sup> *Explanatory Memorandum*, p. 62.

<sup>27</sup> *Explanatory Memorandum*, pp. 62–65.

<sup>28</sup> *Explanatory Memorandum*, p. 63.

<sup>29</sup> *Explanatory Memorandum*, pp. 62–63.

<sup>30</sup> *Explanatory Memorandum*, p. 64.

<sup>31</sup> *Supplementary Explanatory Memorandum*, p. 2.

in Australia's anti-discrimination laws such as the *Racial Discrimination Act 1975* (Racial Discrimination Act).<sup>32</sup> The standard of reasonableness is to be interpreted similarly as that Act, and would depend on contextual factors and the circumstances of the dissemination.<sup>33</sup>

2.40 The Explanatory Memorandum noted that, in some circumstances, the *dissemination* of content may be reasonable, even if the content itself is unreasonable, citing an example where:

... it may be reasonable to reshare content falsely linking to a particular ethnic group to a risk of violent crime, in a post that is part of a discussion about the role of social media in perpetuating harmful racial stereotypes.<sup>34</sup>

### **Digital services in scope of the bill**

2.41 The bill proposes a three-layered approach to defining the types of services within scope of the ACMA's misinformation and disinformation powers.

2.42 A 'digital service' is intended to capture a service offered in Australia that uses the internet to deliver content, or enables an end-user to access content using the internet. A service is offered in Australia if that content is made available to end-users in Australia even if the content is delivered from outside Australia.<sup>35</sup>

2.43 The Minister for Communications (the Minister) would also have the ability to determine a new category of digital service which may come into existence into the future and the risks of misinformation and disinformation evolve.<sup>36</sup> The Explanatory Memorandum contemplates the possibility of determining generative artificial intelligence (AI) services as a distinct kind of digital communications platform in the future.<sup>37</sup>

2.44 The bill would exempt certain services including email services, SMS and MMS (text messages sent via mobile telecommunications networks), and media sharing services without an interactive feature such as subscription video on demand (SVODs), and broadcast video on demand (BVODs).<sup>38</sup>

### **Digital communications platforms**

2.45 The bill also lists different types of 'digital communications platforms' which would be considered a 'digital service'. These include:

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<sup>32</sup> *Explanatory Memorandum*, p. 63.

<sup>33</sup> *Explanatory Memorandum*, p. 64.

<sup>34</sup> *Explanatory Memorandum*, p. 64.

<sup>35</sup> *Explanatory Memorandum*, p. 30. A digital service must be provided to the public.

<sup>36</sup> *Explanatory Memorandum*, pp. 35–36.

<sup>37</sup> *Explanatory Memorandum*, pp. 35–36.

<sup>38</sup> *Explanatory Memorandum*, p. 43.

- 'connective media services' that have the primary function of enabling online interaction between two or more end-users;
  - 'content aggregation services' that collate and present content from multiple sources to end-users;
  - 'internet search engine services' that enable an end-user to search for information from a range of online sources that are collected, indexed or ranked; and
  - 'media sharing services' that allow end-users to upload and share audio, visual or audio-visual content to end users.<sup>39</sup>
- 2.46 Whether a digital service is a digital communications platform generally will depend on the primary function of the digital service. The Explanatory Memorandum stated that the primary function should be determined by considering the experience of end-users of the service, rather than how its functions might be characterised, including how it operates in a technical sense.<sup>40</sup>
- 2.47 To be within the scope of the bill, 'connective' and 'media sharing' services would be required to have an 'interactive feature', as this 'is the mechanism by which misinformation and disinformation can be spread'.<sup>41</sup>
- 2.48 A digital service would be considered to have an interactive feature if the digital service allows the sharing of content between end-users, allows an end-user to post content, or where this interaction is observable to other end-users, other than as part of gameplay.<sup>42</sup>
- 2.49 The bill would exempt certain digital communications platforms from the substantive requirements of the bill, including digital platform rules and approved misinformation codes and misinformation standards.<sup>43</sup>

## Transparency obligations on digital platforms

### The requirement to publish certain information

- 2.50 A key feature of the bill is the framework of transparency and accountability obligations with which the digital communications platforms industry would be required to comply. These transparency obligations would broadly align with the objectives of the voluntary *Australian Code of Practice on Disinformation*

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<sup>39</sup> *Explanatory Memorandum*, pp. 31–35.

<sup>40</sup> *Explanatory Memorandum*, pp. 31–32.

<sup>41</sup> *Explanatory Memorandum*, p. 34.

<sup>42</sup> *Explanatory Memorandum*, p. 37.

<sup>43</sup> *Explanatory Memorandum*, p. 43.

*and Misinformation* (the Code), developed for digital communications platforms by the Digital Industry Group (DIGI).<sup>44</sup>

- 2.51 The bill would impose a requirement on digital communications platform providers to publish certain information, which would be available to end-users and the general public on providers' websites. Obligations would be put on providers to make publicly accessible:
- a report on the outcomes of an assessment by the provider of risks relating to misinformation and disinformation on their platform;<sup>45</sup>
  - their current policy or policy approach in relation to misinformation and disinformation;<sup>46</sup>
  - a current media literacy plan for their platform setting out the measures the platform will take to enable end-users to better identify misinformation and disinformation and identify the source of content disseminated on the platform;<sup>47</sup> and
  - other information, other than source code, as specified in the digital platform rules.<sup>48</sup>
- 2.52 Amendments made by the House of Representatives would extend these obligations to apply to the current policy or policy approach in relation to access by researchers to data, and the steps taken by the provider to comply with its obligations under a data access scheme.
- 2.53 The bill provides that publishing obligations would not apply to certain categories of information, including protected information such as a trade secret or other information that has a commercial value, or personal information within the meaning of the *Privacy Act 1988* (Privacy Act).<sup>49</sup>
- 2.54 Non-compliance with the requirement to publish certain information and make information available to the ACMA would be a civil penalty provision. A contravention of these provisions could incur a maximum penalty of 5000 penalty units for a body corporate and 1000 penalty units for an individual.<sup>50</sup>

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<sup>44</sup> *Explanatory Memorandum*, p. 66.

<sup>45</sup> *Explanatory Memorandum*, pp. 66–67.

<sup>46</sup> *Explanatory Memorandum*, pp. 67–69.

<sup>47</sup> *Explanatory Memorandum*, pp. 60–71.

<sup>48</sup> *Explanatory Memorandum*, pp. 71–72. While the bill and Explanatory Memorandum do not define what is meant by 'source code', source code is generally considered to be the set of instructions that a programmer writes to create software, such as algorithms.

<sup>49</sup> *Explanatory Memorandum*, pp. 72–73.

<sup>50</sup> *Explanatory Memorandum*, p. 74.

2.55 There are no criminal penalties proposed in the bill.<sup>51</sup>

### **Complaints and dispute handling**

2.56 The bill provides that the ACMA would be able to make digital platform rules in relation to complaints and dispute handling processes for misinformation complaints.<sup>52</sup> A misinformation complaint means a complaint in relation to misinformation or disinformation on a digital communications platform or in relation to content removed from a platform.<sup>53</sup>

2.57 These rules could, for example, set minimum standards for complaints and dispute handling processes or require the publication of the time taken by providers to respond to complaints.<sup>54</sup>

2.58 These rules could apply to all or some digital communication platform providers. This would provide the ACMA with flexibility to 'ensure that the regulatory burden on low-risk digital communications platform providers is not unduly onerous'.<sup>55</sup>

2.59 Similar to other provisions in the bill, a digital communications platform provider would not be required to publish certain types of information, including protected information, personal information, or disclose certain information that might cause a significant security vulnerability for the platform or increase misinformation or disinformation.<sup>56</sup>

2.60 A contravention of the digital platform rules relating to complaints and dispute handling would be a civil penalty provision. A contravention of these provisions could incur a maximum penalty of 5000 penalty units for a body corporate and 1000 penalty units for an individual.<sup>57</sup>

### **Proposed new powers for the ACMA**

#### **Proposed record keeping and reporting requirements powers**

2.61 The bill would provide the ACMA with the power to make digital platform rules including those which impose record-keeping and reporting requirements on digital communications platform providers in relation to misinformation and disinformation.

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<sup>51</sup> DITRDCA, *Submission 74*, p. 11.

<sup>52</sup> *Explanatory Memorandum*, p. 80.

<sup>53</sup> *Explanatory Memorandum*, p. 81.

<sup>54</sup> *Explanatory Memorandum*, p. 81.

<sup>55</sup> *Explanatory Memorandum*, p. 81.

<sup>56</sup> *Explanatory Memorandum*, pp. 80–81.

<sup>57</sup> *Explanatory Memorandum*, p. 82.

- 2.62 This could include rules requiring digital platform providers to make and retain records relating to:
- misinformation and disinformation on their platforms;
  - measures implemented to prevent or respond to misinformation and disinformation on their platforms, including their effectiveness.<sup>58</sup>
- 2.63 This is also intended to include information about the '*absence* of [misinformation and disinformation] and the *absence* of measures taken in response' to misinformation and disinformation.<sup>59</sup>
- 2.64 The ACMA may also make rules about reporting requirements relating to information contained in these records, 'as and when required' by the ACMA. This would enable the ACMA to require reports relating to, for example, high-risk subject matters or high-risk events (such as election-related or health-related misinformation and disinformation).<sup>60</sup>
- 2.65 The bill would prevent the ACMA from requiring the preparation of reports containing source code.<sup>61</sup>
- 2.66 The ACMA would have several graduated enforcement mechanisms available to ensure compliance with these rules. This could include remedial directions and civil penalty provisions.<sup>62</sup> These provisions are discussed below.

### **Information-gathering powers**

- 2.67 The bill would provide the ACMA with powers to obtain information and documents from digital communications platform providers. This would apply to information and documents that came into existence before or after the bill's commencement.<sup>63</sup>
- 2.68 Under the bill, the ACMA would be required to have reasonable grounds to believe that the digital communications platform provider has information or a document, other than source code, relevant to misinformation and disinformation on the platform, or to measures implemented to prevent or respond to these issues.<sup>64</sup>

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<sup>58</sup> *Explanatory Memorandum*, p. 85.

<sup>59</sup> *Explanatory Memorandum*, p. 86. Emphasis in original.

<sup>60</sup> *Explanatory Memorandum*, pp. 87–88.

<sup>61</sup> *Explanatory Memorandum*, p. 88. While the bill and Explanatory Memorandum do not define what is meant by 'source code', source code is generally considered to be the set of instructions that a programmer writes to create software, such as algorithms.

<sup>62</sup> *Explanatory Memorandum*, pp. 89–90.

<sup>63</sup> *Explanatory Memorandum*, p. 90.

<sup>64</sup> *Explanatory Memorandum*, pp. 90–91.

- 2.69 These information-gathering powers would be constrained to the ACMA's functions. These include monitoring compliance with the bill's provisions, assisting the industry to develop misinformation codes, developing standards and conducting investigations about misinformation and disinformation on digital communications platforms.<sup>65</sup>
- 2.70 The ACMA would also have the power to obtain information and documents from other persons. This power would enable the ACMA to obtain information 'from a wider range of sources than digital communications platform providers alone'.<sup>66</sup>
- 2.71 Similarly, the ACMA would be required to have reasonable grounds to believe the person has information or a document relevant to misinformation and disinformation on a digital communications platform. However, the bill would limit the use of this power to where the ACMA considers it requires information or documents for the performance of its functions to monitor compliance with the relevant provisions of the *Broadcasting Services Act 1992*, the misinformation codes, misinformation standards and digital platform rules.<sup>67</sup>
- 2.72 These provisions would not apply in relation to information or documents relating to content posted by the person on the digital communications platform, other than in the person's capacity as a fact-checker, a content moderator, an employee of the platform, or a person providing services to the platform provider. As set out in the Explanatory Memorandum:
- The intention is to distinguish between what persons post in a personal capacity ... and what they post in their professional capacity, as part of their role in connection with the digital communications platform provider, for example, for the purpose of monitoring the provider's compliance with misinformation codes or misinformation standards.<sup>68</sup>
- 2.73 The ACMA would also have powers to conduct investigations and hold hearings relating to misinformation and disinformation, including on the direction of the Minister. Such powers could not, however, be exercised with respect to 'particular content posted on a digital communications platform by a single end-user'.<sup>69</sup>

### **Codes and standards-making powers of the ACMA**

- 2.74 Under the bill, the ACMA would have the power to approve industry made codes, to request industry develop codes, and to make standards in some

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<sup>65</sup> *Explanatory Memorandum*, p. 91.

<sup>66</sup> *Explanatory Memorandum*, p. 93.

<sup>67</sup> *Explanatory Memorandum*, p. 94.

<sup>68</sup> *Explanatory Memorandum*, pp. 93–94.

<sup>69</sup> *Explanatory Memorandum*, p. 124

circumstances to compel digital platform service providers to prevent and respond to misinformation and disinformation.<sup>70</sup>

- 2.75 A 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.<sup>71</sup>
- 2.76 Approved codes and standards would be legislative instruments subject to Parliamentary scrutiny and disallowance.<sup>72</sup>
- 2.77 The bill includes limitations intended to ensure that the codes and standard determined do not infringe the constitutional implied freedom of political communication.<sup>73</sup>
- 2.78 These powers could be used if the ACMA determines that existing industry efforts to combat misinformation and disinformation on digital platform services do not provide adequate protection for the Australian community from specified serious harms.<sup>74</sup>
- 2.79 Where the ACMA is satisfied that an approved industry code fails to provide adequate protection for the Australian community from specified serious harms, or in urgent and exceptional circumstances, the ACMA would have the power to make an enforceable standard.<sup>75</sup>

### **Enforcement mechanisms for non-compliance and review of the proposed legislation**

- 2.80 The bill proposes that the ACMA take a graduated, proportionate and risk-based approach to non-compliance.
- 2.81 The ACMA would be provided with graduated enforcement mechanisms, and would be able to choose the appropriate action, including issuing formal warnings, remedial directions and infringement notices. The ACMA could also apply for an injunction, and pursue civil penalties, depending on the particular provision.<sup>76</sup>

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<sup>70</sup> *Explanatory Memorandum*, p. 98.

<sup>71</sup> *Explanatory Memorandum*, pp. 105–107.

<sup>72</sup> *Explanatory Memorandum*, pp. 107–108.

<sup>73</sup> *Explanatory Memorandum*, pp. 106 and 114–15.

<sup>74</sup> *Explanatory Memorandum*, pp. 108–109.

<sup>75</sup> *Explanatory Memorandum*, pp. 114–119.

<sup>76</sup> *Explanatory Memorandum*, p. 4.

2.82 Key decisions made by the ACMA in relation to non-compliance and enforcement would be able to be reviewed by the Administrative Review Tribunal. The Explanatory Memorandum stated that:

... the amount of civil penalties payable by digital communications platform providers for breaches of approved misinformation codes and misinformation standards would be determined by the courts (up to the maximum amounts specified in the bill).<sup>77</sup>

2.83 DITRDCA stated that digital platforms may be subject to civil penalties which are up to five per cent of annual global turnover for breaches of a misinformation standard, and up to two per cent for breaches of a misinformation code.<sup>78</sup>

### **Review of the proposed legislation**

2.84 Under the bill, the resulting legislation must be reviewed as soon as possible after the third anniversary of its commencement, and afterwards at intervals of no greater than three years.<sup>79</sup>

2.85 The review must include public consultation, and should include an assessment of the impact of the legislation on freedom of expression, and consider whether amendments are required.

2.86 Reports of the reviews would be required to be tabled in each House of the Parliament within 15 sitting days of completion.<sup>80</sup>

2.87 An amendment passed by the House of Representatives required that the review be independent (see below).

### **Amendments passed by the House of Representatives**

2.88 As outlined in Chapter 1, on 7 November 2024 the House of Representatives passed several amendments to the bill. These included:

- amending the definition of 'professional news content' to make explicit that the provisions would apply to news content produced by a person who is subject to the rules of the Community Radio Broadcasting Codes of Practice;
- requiring digital communication platform providers to publish information regarding their policy or policy approach for supporting access by researchers to data relating to misinformation and disinformation on the platform;
- providing the ACMA with the power to make digital platform rules to establish one or more data access schemes, permitting independent

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<sup>77</sup> *Explanatory Memorandum*, p. 4.

<sup>78</sup> DITRDCA, *Submission 74*, p. 11.

<sup>79</sup> *Explanatory Memorandum*, p. 125.

<sup>80</sup> *Explanatory Memorandum*, p. 125.

researchers to be given access to data held by digital communications platform providers in certain circumstances;

- requiring a review of the data access schemes rules; and
- clarifying that the triennial statutory review is an independent review.<sup>81</sup>

2.89 As set out in the Supplementary Explanatory Memorandum, the data access related amendments reflect 'increasing recognition worldwide of the value of independent research about misinformation and disinformation on digital communications platforms'. This includes developments in other jurisdictions, including the European Union, to implement a data access scheme supporting independent research.<sup>82</sup>

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<sup>81</sup> Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024, *Supplementary Explanatory Memorandum*, p. 2.

<sup>82</sup> *Supplementary Explanatory Memorandum*, p. 2.

# Chapter 3

## Scope and coverage

- 3.1 This chapter examines key issues raised by inquiry participants about the scope and coverage of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill).
- 3.2 The chapter sets out:
- various perspectives on the proposed definitions of misinformation and disinformation as well as the scope of digital services covered by the bill;
  - perspectives on the harmful impact of misinformation and disinformation including supporting and opposing views on the different categories of serious harm;
  - various views on the bill's proposed categories of excluded content;
  - views on the operation of the bill's provisions relating to scope and coverage, in particular, the role of the Australian Communications and Media Authority (ACMA); and
  - broader concerns raised about the bill's potential impact on freedom of expression.
- 3.3 The next chapter discusses views relating to the bill's focus on transparency, integrity and compliance.

### Views on the scope of the bill

#### Defining misinformation and disinformation

- 3.4 As set out in Chapter 2, the bill proposes a definition of 'misinformation' and 'disinformation' and sets out various types of harm that would be considered 'serious harm'. Both misinformation and disinformation are defined as content that 'contains information that is reasonably verifiable as false, misleading or deceptive'.
- 3.5 As noted in previous chapters, the definitions in the bill are intended to set a high and targeted threshold for the content in scope. The Department of Infrastructure, Transport, Regional Development, Communication and the Arts (DITRDCA) reiterated that:

[The bill] 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.<sup>1</sup>

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<sup>1</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), *Submission 74*, p. 8.

***Support for the bill's proposed definitions of misinformation and disinformation***

- 3.6 Various submitters welcomed the refining of these definitions from the 2023 Exposure Draft of the bill. For example, the Australian Human Rights Commission (AHRC) outlined that requiring information to be reasonably verifiable as false, misleading or deceptive 'strengthens the protection against opinions being unduly captured by the bill, and more closely aligns with existing definitions of misinformation and disinformation'.<sup>2</sup>
- 3.7 The Digital Industry Group (DIGI), while contending that the scope of the definitions still remains too broad, acknowledged that the inclusion of a 'reasonably verifiable' test was an improvement on the workability of the bill.<sup>3</sup>
- 3.8 TikTok Australia also expressed its support for changes in the bill which responded to the 2023 Exposure Draft consultation process, including defining disinformation 'by reference to inauthentic behaviour'.<sup>4</sup>
- 3.9 The Australian Muslim Advocacy Network (AMAN) Foundation stated that '[t]he definitions of misinformation and disinformation are clear and certain, and we think it appropriate that they are linked to defined serious harms'.<sup>5</sup>
- 3.10 Similarly, the Uniting Church in Australia Synod of Victoria and Tasmania, supported the definitions of misinformation, disinformation, inauthentic behaviour and serious harm in the bill.<sup>6</sup>

***The cumulative impact of misinformation and disinformation***

- 3.11 Fact-checking organisations, such as the Australian Associated Press (AAP) FactCheck, contended that the proposed definitions, including their relation to 'serious harm' may be too narrow, and that 'the bill may discourage and disincentivise fact-checking of any content that does not meet that high threshold'.<sup>7</sup> Both AAP FactCheck and RMIT FactLab emphasised the harm posed by the cumulative effect of individual pieces of content. The AAP FactCheck stated that:

... it is not common to encounter individual pieces of misinformation and disinformation that, taken in isolation, are capable of causing serious harm to, for example, public health in Australia or the Australian economy. Instead, AAP FactCheck believes serious harm to such systems and

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<sup>2</sup> Australian Human Rights Commission (AHRC), *Submission 66*, p. 6.

<sup>3</sup> Digital Industry Group (DIGI), *Submission 79*, p. 13.

<sup>4</sup> TikTok Australia, *Submission 91*, p 3.

<sup>5</sup> Australian Muslim Advocacy Network Foundation, *Submission 29*, p. 2.

<sup>6</sup> Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 50*, p. 3.

<sup>7</sup> Australian Associated Press (AAP) FactCheck, *Submission 36*, p. 3.

institutions is more likely to result from the cumulative impact of many harmful pieces of misinformation and disinformation.<sup>8</sup>

***Concerns that the bill's definitions are too broad***

3.12 Various submitters raised concerns that the definitions of 'misinformation' and 'disinformation' as proposed in the bill could be too broad and ambiguous, with some arguing that these definitions could lead to censorship of legitimate speech and content.<sup>9</sup>

3.13 As outlined earlier, while noting improvements, DIGI submitted that the scope of the definitions, the harms in scope and the threshold for harm remain too broad. It was of the view that the scope 'overly restricts public comment on issues of public concern'. DIGI stated that:

As drafted, a single post by an individual that is not widely viewed but which might contribute to harm in the distant future, may be in scope of the bill.<sup>10</sup>

3.14 Several submitters also argued that the lack of precise definitions and clear thresholds could potentially lead to subjective and inconsistent enforcement by both the regulator and digital platforms.<sup>11</sup> For example, CitizenGO argued that:

By not providing specific, concrete definitions, the bill gives regulatory authorities, such as the [ACMA], an immense amount of discretion in deciding what information can be deemed harmful or misleading. The lack of clear guidance in the bill makes it nearly impossible for individuals, media outlets, or digital platforms to know in advance whether their speech or content could be subject to censorship or penalties.<sup>12</sup>

3.15 Similarly, Fighting Harmful Online Communication, a research initiative at the University of Melbourne, noted that while both definitions are fundamental to the bill's operation, 'they are likely to be burdensome to implement, and risk being applied in ways that are broad, overly-inclusive and threatening to freedom of opinion and expression'.<sup>13</sup>

3.16 The First Nations Aboriginal Corporation highlighted that the broad definitions could significantly impact Indigenous organisations both culturally and legally, stating:

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<sup>8</sup> AAP FactCheck, *Submission 36*, p. 3; RMIT FactLab, *Submission 85*, p. 3.

<sup>9</sup> See, for example, First Nations Peoples Aboriginal Corporation, *Supplementary Submission 6.1*, p.9; CitizenGO, *Submission 47*, p. 21.

<sup>10</sup> DIGI, *Submission 79*, p. 2.

<sup>11</sup> See, for example, CitizenGO, *Submission 47*, p.21; Institute of Public Affairs (IPA), *Submission 44*, p.1.

<sup>12</sup> CitizenGO, *Submission 47*, p. 21.

<sup>13</sup> Fighting Harmful Online Communication, *Submission 30*, p. 1

For Indigenous organisations, this poses a risk as their historical, political, or cultural narratives—particularly those challenging mainstream governmental or societal viewpoints—might be targeted even when they are based on long-standing oral traditions or perspectives that differ from official narratives.<sup>14</sup>

- 3.17 Other submitters to the inquiry including the Victorian Bar, Dr Nick Coatsworth and the Feminist Legal Clinic Inc. expressed continued concern about the definitions contained in the bill. Other submitters, such as the Law Council of Australia, indicated that while noting the changes to the definitions since the Exposure Draft, they were unable to reach a position on the bill and its changes given the short time available to make submissions.<sup>15</sup>
- 3.18 Various submitters put forward the view that there is a potential risk of over-censorship of content by digital communication platform providers, given the definitions in the bill and the penalties for non-compliance.<sup>16</sup> This is discussed in the next chapter.

### *Opinions, claims, commentary and invective*

- 3.19 The AHRC noted that other concerns it had raised about the definitions of misinformation and disinformation in its submission to the public consultation on the Exposure Draft had not been addressed. This included that the term 'information' is not itself defined 'but instead it is stated in the Explanatory Memorandum that the term 'is intended to include opinions, claims, commentary and invective''.<sup>17</sup>
- 3.20 Both the AHRC and the Victorian Bar expressed caution about the inclusion of 'opinions, claims, commentary and invective' within the scope of the bill as this 'significantly broadens the potential reach of this legislation and increases the risk of it being used to censor legitimate debate about matters of public importance'.<sup>18</sup>
- 3.21 A representative of the Victorian Bar considered that the reference in the bill's Explanatory Memorandum to the inclusion of opinion, claims, commentary and invective was the 'most peculiar insertion', and that characterising these types of content as misinformation was 'one of the most disturbing aspects of this bill'. The Victorian Bar stated that '[t]hat inclusion of 'opinions' and 'claims' within the definition of misinformation—not according to the text of the bill, mind you,

<sup>14</sup> First Nations Aboriginal Corporation, *Supplementary Submission 6.1*, p. 10. Emphasis in original.

<sup>15</sup> Victorian Bar, *Submission 62*, p. 6; Dr Nick Coatsworth, *Submission 13*, p. 1; Feminist Legal Clinic, *Submission 24*, pp. 1–2; Law Council of Australia, *Submission 75*, p. 2.

<sup>16</sup> See, for example, Aligned Council of Australia, *Submission 81*; CitizenGO, *Submission 47*, p. 12; IPA, *Submission 44*, p. 5; Australian Christian Lobby (ACL), *Submission 65*, p. 15.

<sup>17</sup> AHRC, *Submission 66*, p. 6.

<sup>18</sup> AHRC, *Submission 66*, p. 6; Victorian Bar, *Submission 62*, pp. 4–5.

but according to the explanatory memorandum—is what gives us grave concern'.<sup>19</sup>

3.22 Professor Anne Twomey also highlighted the inclusion of these types of content in the Explanatory Memorandum and stated that 'you can't prove that someone's opinion is false; it's an opinion'. Further, Professor Twomey stated that it may be challenging to use fact checkers to assess this content.<sup>20</sup>

3.23 Professor Twomey highlighted that while the bill set the meaning of misinformation and disinformation to include information that is reasonably verifiable as false, the Explanatory Memorandum appears to expand the scope to content that would not be possible to reasonably verify. Professor Twomey gave the following example:

For example, there are people who make silly arguments about voting machines being rigged. We don't use a voting machine; we use a pencil. That's verifiably untrue. But, once you get beyond what's verifiably untrue to things like claims and opinions that are made during an election process, and once you say, 'It's not just the electoral process; we say the electoral process is undermined if people are told things that might mislead them', then you're right slap-bang into political communication, and that's where the thing will fall over.<sup>21</sup>

3.24 DITRDCA reinforced that the definition of 'information' needs to be read in conjunction with the other provisions in the bill which set a high threshold for serious harm, and the various safeguards for freedom of speech.<sup>22</sup>

### ***Limiting the bill to disinformation***

3.25 Some inquiry participants recommended that the bill should be limited to focus on disinformation, citing concerns that determining what is misinformation can be subjective and driven by individual characteristics, such as their news and political preferences. Google outlined:

Misinformation is a complex and difficult issue, for governments and platforms alike. Determining what is and isn't misinformation can be subjective and raises significant technical, policy and epistemic questions - one person's misinformation is often another person's deeply held belief. For others, misinformation is used to describe information they find offensive, simply don't agree with or like.<sup>23</sup>

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<sup>19</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, pp. 4–5.

<sup>20</sup> Professor Anne Twomey, AO, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>21</sup> Professor Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>22</sup> Mr Sam Kursar, Director, Digital Platforms, International and Policy Branch, DITRDCA, *Committee Hansard*, 11 November 2024, p. 57.

<sup>23</sup> Google, *Submission 86*, p. 8.

- 3.26 Google stated that the bill, or 'at the very least the ACMA's code and standard making powers' should be limited to 'disinformation that involves inauthentic behaviours'.<sup>24</sup>
- 3.27 Similarly, DIGI argued that the bill should 'give priority to tackling the most harmful forms of disinformation which can artificially manipulate online discourse and seriously threaten democratic processes such as elections, health and citizens safety and security'.<sup>25</sup>
- 3.28 DIGI recommended that the Australian Government consider whether other policy interventions might be more appropriate for addressing misinformation, such as 'increased funding for media literacy programs and fact-checking organisations'.<sup>26</sup>

### *Intent to deceive*

- 3.29 AAP FactCheck proposed expanding the bill's proposed definition of disinformation to include instances where content is intended 'to manipulate and/or deceive'. It highlighted research on media literacy and disinformation which showed that 'the selective presentation of information can manipulate audiences by pushing them towards certain beliefs or emotions'.<sup>27</sup>
- 3.30 AAP FactCheck stated its position that 'manipulation through selective framing, emotional influence, or incomplete narratives can foster the spread of disinformation, even when no outright deception is intended'.<sup>28</sup>
- 3.31 Fighting Harmful Online Communication considered that there is a risk involved in requiring digital communications platform providers to identify the disseminating person's intent to deceive. It highlighted the challenges which may be involved in identifying this, and stated that:

Research has demonstrated some evidence that that human readers and computational tools can reliably differentiate between truth and lies but interpreting the "intent" or motivation of the sender is fraught with difficulty. Furthermore, there is no known process that can maintain a rigorous and repeatable standard for reading the intent of different senders.<sup>29</sup>

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<sup>24</sup> Google, *Submission 86*, pp. 8–9.

<sup>25</sup> DIGI, *Submission 79*, p. 2.

<sup>26</sup> DIGI, *Submission 79*, p. 2.

<sup>27</sup> AAP FactCheck, *Submission 36*, p. 4.

<sup>28</sup> AAP FactCheck, *Submission 36*, p. 3.

<sup>29</sup> Fighting Harmful Online Communication, *Submission 30*, p. 2.

### *Growing concerns about inauthentic behaviour*

3.32 The Explanatory Memorandum outlines the role of 'inauthentic behaviour' as a key indicator of disinformation. This could include the use of bot farms (networks of automated accounts), fake accounts, deep fakes and coordinated inauthentic behaviour.<sup>30</sup>

3.33 CyberCX, an Australian cybersecurity company, emphasised the increasing sophistication of artificial intelligence (AI)-enabled disinformation campaigns, outlining that these campaigns are likely to become more prevalent within Australia. It outlined the emergence of the 'Green Cicada Network':

There were 5,000-plus inauthentic accounts we identified that had images that had been clearly generated by a generative AI image platform. The content was clearly being generated through a Beijing based or centred generative AI large language model and was amplifying divisive political content online. However, the vast majority of those accounts that we identified were effectively dormant, but becoming enlivened—and there was a clear escalation of activity. Our assessment was that that was probably in the lead-up to becoming fully operational in time for the weeks preceding the US election in early November.<sup>31</sup>

3.34 CyberCX further outlined views about industry efforts and the appropriateness of the co-regulatory model:

I think the current model is that social media companies are allowing the moral equivalent of an all-you-can-eat buffet where the food is occasionally poisoned. Anything that can be done to interrupt that model and to push these companies to take more action and to be more accountable for inauthentic behaviour and malicious behaviour on their platforms would be welcomed ...

However, historically, other similar regulatory regimes—co-regulatory have been introduced, whether that's with the Safety Commissioner regarding cyberbullying or image-based abuse or with the abhorrent and violent content regime, which was introduced after the atrocities in Christchurch. Similar arguments were made at that time that it was unfeasible, that it would go too far or even that it would cause these companies to have to completely remove their services from Australia. Frankly, none of that has come to bear in the time that's passed since those other coregulatory regimes were introduced.<sup>32</sup>

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<sup>30</sup> *Explanatory Memorandum*, pp. 59–61.

<sup>31</sup> Mr Jordan Newnham, Executive Director, Corporate Affairs, CyberCX, *Committee Hansard*, 17 October 2024, pp. 42–43.

<sup>32</sup> Mr Newnham, CyberCX, *Committee Hansard*, 17 October 2024, p. 45.

3.35 DITRDCA outlined that that bill has been drafted in recognition of the evolving state of technology, and that the rules and other legislative instruments, would allow AI content to be factored into the regulatory approach.<sup>33</sup>

### **Coverage of digital services**

3.36 As set out in Chapter 2, the bill's provisions would apply to a wide range of digital services including search engines, news aggregators, instant messaging services, social media, web-forums, dating sites and podcasts with an interactive feature.<sup>34</sup>

3.37 The bill's provisions would not apply to SMS and MMS (text messages sent via mobile telecommunications networks), email, and media sharing devices without an interactive feature such as subscription video on demand and broadcast video on demand.<sup>35</sup>

3.38 Industry stakeholders recommended that the bill adopt a risk-based approach, focusing on services with a higher likelihood of disseminating misinformation and disinformation.<sup>36</sup>

3.39 DIGI contended that the bill should adopt a proportionate, risk-based approach to the scope of services subject to the bill, 'so that it only captures those services which are likely to widely and rapidly spread mis/disinformation that is reasonably likely to result in serious harm'.<sup>37</sup> This includes services that would make the content available to a potentially unlimited number of persons, enable widespread ease of distribution or virality, and meet specified risk criteria as outlined in the bill.<sup>38</sup>

3.40 Google suggested that general search engines, such as Google Search, should be either excluded from the bill or subject to tailored requirements. Google also contended that the definition of a 'connected media service' has the potential to extend to services which pose a low risk of misinformation and disinformation.<sup>39</sup>

3.41 The Interactive Games & Entertainment Association (IGEA), representing the Australian video game industry, highlighted the low-risk nature of video game

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<sup>33</sup> DITRDCA, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

<sup>34</sup> DITRDCA, [Fact sheet - Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2024](#), 12 September 2024.

<sup>35</sup> DITRDCA, *Fact sheet - Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*, 12 September 2024.

<sup>36</sup> See, for example, DIGI, *Submission 79*, p. 3; Google, *Submission 86*, p. 9.

<sup>37</sup> DIGI, *Submission 79*, p. 3.

<sup>38</sup> DIGI, *Submission 79*, p. 3.

<sup>39</sup> Google, *Submission 86*, p. 10.

services. It argued that the risk of misinformation and disinformation on these platforms is minimal, particularly for services ancillary to video games, such as live streaming, which should be treated separately.<sup>40</sup>

3.42 Snap Inc., the technology company responsible for the Snapchat instant messaging app and service, highlighted its difference from traditional social media noting that Snapchat's primary function is a 'visual messaging application, designed for private communications ... with the aim of encouraging users to interact creatively with their real friends, not strangers'.<sup>41</sup>

3.43 Snap Inc. recommended the bill expand its definition of 'private message' to 'private communications' to include both message and online content (such as private 'Stories' which enables users to share photos or videos with their friends).<sup>42</sup>

### **The harmful impacts of misinformation and disinformation on Australians**

3.44 As set out in Chapter 2, the bill outlines specific categories that qualify as 'serious harm' for the purposes of the bill. These include:

- harm to the operation or integrity of an Australian electoral process;
- harm to public health in Australia;
- vilification of a group in Australian society distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or ethnic origin, or vilification of an individual because of a belief that the individual is a member of such a group;
- 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.<sup>43</sup>

3.45 The DITRDCA outlined that these types of serious harm are narrowly defined to align with Australia's obligations under international human rights law.<sup>44</sup>

3.46 The Australian Security Intelligence Organisation (ASIO) stated that the critical question for that organisation is whether the activity would constitute an act of foreign interference, or motivates, promotes or influences politically motivated violence (PMV) or the promotion of communal violence (PCV):

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<sup>40</sup> Interactive Games & Entertainment Association, *Submission 31*, p. 4.

<sup>41</sup> Snap Inc., *Submission 63*, p. 5.

<sup>42</sup> Snap Inc., *Submission 63*, p. 5.

<sup>43</sup> *Explanatory Memorandum*, p. 6.

<sup>44</sup> DITRDCA, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

Disinformation could constitute an act of foreign interference where a foreign power or its proxy is spreading information clandestinely. In such instances, Australia's national interests could be negatively impacted in favour of a foreign power's interests, with potential risks to our political or governmental processes.

Disinformation promoting PMV/PCV would constitute a threat to security where, for example, an entity promotes false information about a religious, ethnic or issue-based group to encourage, or justify, acts of violence against that group.<sup>45</sup>

- 3.47 The ACMA stated that it would not have a role in assessing the severity of harm, but that it would instead 'assess the effectiveness of the systems and processes that digital platforms have in place for responding to that material:

The ACMA would not have a role in assessing the seriousness of harm under the Bill. Digital communications platforms would be responsible for assessing whether misinformation or disinformation on their service was seriously harmful. This assessment would be based on the definitions provided in the bill.<sup>46</sup>

- 3.48 A range of different perspectives were expressed about the different types of 'serious harm' outlined in the bill. While some examples of serious harm, such as the intentional infliction of physical injury to an individual, did not generate significant debate, others such as harm to public health were more contentious.

- 3.49 The following section outlines key views expressed about the different categories of 'serious harm' included in the bill.

### **Harm to public health**

- 3.50 Croakey Health Media, an independent, not-for-profit media organisation, strongly supported the inclusion of public health, including preventative health measures, as one of the identified harms. Professor Bronwyn Fredericks outlined:

We saw, at the commencement of COVID, large-scale elements of misinformation and disinformation to the point where examples were put into the media, whether they were true or not, and shown in the local regions. I had to talk with my own mother about the facts, and she talked to other older women, around believing or not believing conspiracies and misinformation in regards to COVID. It is about people having the right information to make clear, informed decisions for themselves and knowing

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<sup>45</sup> Australian Security Intelligence Organisation (ASIO), written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

<sup>46</sup> ACMA, written questions on notice from Senator Grogan, 22 October 2024 (received 1 November 2024).

what is available. I also think: when did it become okay in Australia to deliberately deceive people, which may result in harm?<sup>47</sup>

- 3.51 Currie Country Social Change Aboriginal Corporation highlighted the broader social impact of misinformation on public health including its disproportionate impact on First Nations communities during the COVID-19 pandemic:

Throughout the COVID-19 pandemic, Aboriginal communities were disproportionately affected by online misinformation regarding public health measures. False claims circulated on social media suggested that vaccines were dangerous and that the government was using Aboriginal people as "guinea pigs" for vaccination trials. This spread of disinformation not only endangered the health of Aboriginal communities, who are more vulnerable to COVID-19 due to pre-existing health disparities, but also intensified existing racial prejudices.<sup>48</sup>

- 3.52 The Uniting Church in Australia, Synod of Victoria and Tasmania, provided evidence about the damage of misinformation and disinformation on public health, distinguishing it from an individual making a political comment:

During COVID, the kind of thing I was seeing—and my husband in his church; he's an Anglican priest—was people turning up to church for the first time in their lives and asking if they could buy communion, consecrated bread and wine, because they had seen things on the internet that said if they drank the blood of Jesus they would not get COVID and would not get vaccines. That's [the] kind of misinformation that I think does real damage to public health.<sup>49</sup>

***Concerns raised about including public health as a serious harm***

- 3.53 In contrast to these views, other submitters expressed concern about the potential for these provisions to stifle legitimate debate on public health policies, drawing on the experience of the COVID-19 pandemic to illustrate these concerns.<sup>50</sup>

- 3.54 Dr Nick Coatsworth expressed his concern stating:

There are some very compelling reasons to support or amend the legislation. But I do worry about whether public health should be included at all in this, because the only circumstance where you would want to implement this is in a pandemic. The only circumstance where it becomes very uncertain and changeable over time is a pandemic.

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<sup>47</sup> Professor Bronwyn Fredericks, Co-Chair, Croakey Health Media, *Committee Hansard*, 11 October 2024, p. 51.

<sup>48</sup> Currie Country Social Change, *Submission 99*, pp. 4–5.

<sup>49</sup> Reverend Doctor Robyn Whitaker, Uniting Church in Australia Synod of Victoria and Tasmania, *Committee Hansard*, 17 October 2024, p. 7.

<sup>50</sup> See for example, Dr Nick Coatsworth, *Submission 13*, pp. 1–3; COVERSE, *Submission 10*; pp. 1–4; IPA, *Submission 44*, p. 4.

Therefore I'm not sure we can make this work for the concept of public health ... My position has always been, and will probably always be, that we got the settings broadly correct for the Australian response and that some of those settings in particular outlived the evidence base. A new evidence base emerged, and we kept settings in place that could have been changed as that evidence base emerged.<sup>51</sup>

3.55 Similarly, the Australian Medical Professionals Society, a collective of medical and allied health experts, argued that the bill could potentially impact legitimate scientific debate:

By centralising control over what constitutes medical "truth" in the hands of government regulators, we risk creating an even more Orwellian twist in a system that is already subject to manipulation by powerful interests, to further suppress inconvenient facts and legitimate debate. This would be disastrous not only for free speech and democracy, but for public health as well.<sup>52</sup>

3.56 The United Australia Party raised broader concerns about the potential impact of the bill on the freedom of medical practitioners to discuss a full range of treatment options with their patients, citing instances where medical professionals have been 'silenced and threatened through regulatory action such as suspension, simply for asking questions about the efficacy of products such as the COVID-19 vaccines'.<sup>53</sup>

3.57 In response to concerns about freedom of expression as it pertains to scientific debate and decisions about content on digital platforms, DITRDCA stated that:

The bill does not apply to professional news content or content that could reasonably be regarded as parody or satire. It also does not apply to the reasonable dissemination of content that is for academic, artistic, scientific or religious purposes.<sup>54</sup>

3.58 Also, DITRDCA stated that:

Nothing in the bill enables the ACMA to take down individual pieces of content or user accounts. The bill takes a system level approach and digital platforms would remain responsible for managing content on their services.<sup>55</sup>

### **Harm to the operation or integrity of the electoral process**

3.59 The Australian Electoral Commission (AEC) outlined that an increase in misinformation and disinformation about the electoral process has the potential

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<sup>51</sup> Dr Nick Coatsworth, Private Capacity, *Committee Hansard*, 17 October 2024, pp. 69–70.

<sup>52</sup> Australian Medical Professionals Society, *Submission 58*, p. 3.

<sup>53</sup> United Australia Party, *Submission 20*, p. 4.

<sup>54</sup> DITRDCA, *Submission 74*, p. 4.

<sup>55</sup> DITRDCA, *Submission 74*, p. 4.

to erode voters' trust in the legitimacy of election results. It underscored the real-world impact of misinformation, and stated:

The prevalence of online misinformation and disinformation about electoral processes has led to an increase in conspiracy theory inspired protests and threats targeting participants in the electoral process – including AEC staff. Online false or misleading information about electoral processes invariably does not stay online, it can and does result in real world action and harm.<sup>56</sup>

- 3.60 The Department of Home Affairs also highlighted Australia's increasing vulnerability to the spread of misinformation and disinformation, including potential impacts to social inclusion and democracy:

Those challenges include the spread of false and misleading information online, particularly through digital platforms, and the way those interact with other challenges to democracies, including foreign interference, societal polarisation or division, and experiences of prejudice and discrimination. It's in those interactions that the connection between democratic resilience and social cohesion lies. Among the enduring strengths of Australian democracy are its provision of trusted institutions, the free and open flows of credible information and the provisions for social inclusion. We see the range of challenges facing democracy as risking erosion in those three key areas of strength.

... There is nothing new about false and misleading information or mis- and disinformation, but what is new is the ability for that to be spread with unprecedented speed, scale and intensity on digital platforms and the way that that is manifesting in risks to harm to societal wellbeing and the division and exclusion of people from the public sphere.<sup>57</sup>

- 3.61 The impact of seriously harmful misinformation and disinformation on First Nations people was raised by Croakey Health Media:

The failure of social media companies to stop the spread of racist and hateful commentary targeting Aboriginal and Torres Strait Islander people undermines their capacity to participate in public life, including through online participation, contributing to public debate and running for elections.<sup>58</sup>

- 3.62 In contrast, other submitters highlighted views about the perceived potential of the bill to allow the censorship of political speech, and the appropriateness of digital platforms to regulate electoral content. The Institute of Public Affairs (IPA), CitizenGO and the Australian Christian Lobby (ACL) expressed

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<sup>56</sup> Australian Electoral Commission (AEC), *Submission 4*, p. 1.

<sup>57</sup> Ms Jeni Whalan, First Assistant Secretary, Office of Community Cohesion, Department of Home Affairs, *Committee Hansard*, 11 November 2024, p. 44.

<sup>58</sup> Croakey Health Media, answers to written questions on notice from Senator Lisa Darmanin, 14 October 2024 (received 21 October 2024).

concern that the bill's definition of 'harm to the operation or integrity of an Australian electoral process' as overly broad and subjective.<sup>59</sup>

- 3.63 Professor Anne Twomey provided evidence about the potential ambiguities between the bill and the Explanatory Memorandum and its implications for freedom of political communication and stated:

But, once you get beyond what's verifiably untrue to things like claims and opinions that are made during an election process, and once you say, 'It's not just the electoral process; we say the electoral process is undermined if people are told things that might mislead them,' then you're right slap-bang into political communication, and that's where the thing will fall over.<sup>60</sup>

### **Imminent damage to critical infrastructure or disruption of emergency services**

- 3.64 The inquiry heard evidence about the severe consequences of misinformation and disinformation, including to critical infrastructure and the disruption of emergency services.

- 3.65 The Deputy Coordinator-General of the National Emergency Management Agency highlighted the real-world impacts and importance of the bill for the safety of communities:

When most Australians think of emergency management and response they think of those classic images of fire fighters battling huge bushfires, helicopters winching people from flood waters and alike, this is the reality and critical.

But, after decades of work in this space I would make the argument that more lives can be saved and harm reduced through public information and warnings, than with all the boats, trucks and planes.

- 3.66 The Deputy Coordinator-General highlighted the risks to lives and property that misinformation and disinformation poses during a time of emergency, and noted the increase in this type of material in recent years:

Both have the capability to erode confidence in government responses, undermine social cohesion, impact the well-being of people and society, and in the worst cases, prove a threat to life and property ...<sup>61</sup>

- 3.67 The National Emergency Management Agency gave the examples of 'incorrect and potentially dangerous claims' that circulated online, during the 2019–20 Black Summer bushfires, which claimed that 'arsonists were deliberately setting the majority of fires that threatened or destroyed communities, and even the suggestion of possible links between the fires and Islamic State'.<sup>62</sup> Monitoring and attempting to counter misinformation and disinformation during an

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<sup>59</sup> ACL, *Submission 65*, p. 11; IPA, *Submission 44*, p. 3; CitizenGO, *Submission 47*, p. 16.

<sup>60</sup> Professor Twomey, *Private Capacity*, *Committee Hansard*, 11 November 2024, p. 4.

<sup>61</sup> National Emergency Management Agency, *Opening Statement*, tabled 11 November 2024, p. 1.

<sup>62</sup> National Emergency Management Agency, *Opening Statement*, tabled 11 November 2024, p. 1.

emergency was stated to draw resources away from other protective work, undermining the authority, quality and reach of emergency information.<sup>63</sup>

- 3.68 In contrast to these views, submitters such as CitizenGO expressed concern about the potential for government overreach and the suppression of legitimate debate on key issues such as infrastructure development, environmental protection and emergency response measures.<sup>64</sup>

### **Views about other types of serious harms in the bill**

- 3.69 Various views were expressed about the definitions and scope of the other types of serious harms in the bill. For example, the Executive Council of Australian Jewry supported the concept that 'serious harm' should encompass vilification of a group in Australian society, or a member of such a group, distinguished by race, religion, sex, sexual orientation, gender identify, disability, national or ethnic origin.<sup>65</sup> Other submitters however contended that the term 'vilification' is vague and could be broadly interpreted.<sup>66</sup>

- 3.70 In relation to 'serious harm to the economy', some submitters expressed caution that this harm could also be widely interpreted. For example, the IPA contended that criticism of the Government's handling of the economy 'construed as wrong or missing context' might be considered harmful to the Australian economy.<sup>67</sup> Similarly the AHRC stated:

To give one example, legitimate discussion of interest rates may harm any number of Australians' confidence in financial markets, especially during times of economic hardship. However, this isn't information that should be captured as causing or contributing to serious harm.<sup>68</sup>

- 3.71 With respect to a debate about interest rates, DITRDCA outlined that, given the high thresholds to be satisfied under the bill, it would be unlikely that this would constitute misinformation and disinformation under the bill:

I can't see a situation where a debate about interest rates would itself constitute mis and disinformation as defined under this bill. It would need to be both verifiably false and misleading and have significant and

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<sup>63</sup> National Emergency Management Agency, Opening Statement, tabled 11 November 2024, p. 2.

<sup>64</sup> CitizenGO, *Submission 47*, p. 17.

<sup>65</sup> Executive Council of Australian Jewry, *Submission 53*, p. 6.

<sup>66</sup> See, for example, CitizenGO, *Submission 47*, pp. 15 and 17; Combined Faith Leaders, *Submission 70*, p. 5; ACL, *Submission 65*, p. 11.

<sup>67</sup> IPA, *Submission 44*, p. 3.

<sup>68</sup> AHRC, *Submission 66*, p. 5.

far-reaching consequences, and pose that risk of harm. A debate with different opinions doesn't fall into that category.<sup>69</sup>

### **Views on the bill's proposed excluded content categories**

3.72 To protect freedom of expression, the bill would not apply to the dissemination of content that:

- would reasonably be regarded as parody or satire;
- professional news content; or
- reasonable dissemination of content for any academic, artistic, scientific or religious purpose.<sup>70</sup>

3.73 The following section outlines views expressed about the types of content that would be considered excluded, specifically professional news content and the reasonable dissemination of content for any academic, scientific or religious purpose.

### **Exempting professional news content**

#### *Support for excluding professional news content*

3.74 Media organisations, including Australian Broadcasting Corporation (ABC), Special Broadcasting Service (SBS) and News Corp Australia, as well as representatives of the commercial broadcasting sector (Free TV Australia, Commercial Radio and Audio), supported exempting professional news content from the bill.

3.75 These submitters variously argued that professional news content is already subject to industry-specific regulations and codes of conduct, such as the Australian Press Council Standards of Practice and various broadcasting codes. They considered that applying the bill's provisions to professional news content would create unnecessary duplication and potentially undermine these existing frameworks.<sup>71</sup>

3.76 For example, the Public Interest Journalism Initiative stated that:

A number of editorial rules and standards already apply to the production of professional news content; those are more appropriate mechanisms for ensuring news integrity than this Bill, which is designed to investigate and hold accountable the systems and processes of multinational digital platforms.<sup>72</sup>

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<sup>69</sup> Mr James Chisholm, Deputy Secretary, Communications and Media Group, DITRDCA, *Committee Hansard*, 11 November 2024, p. 60.

<sup>70</sup> *Explanatory Memorandum*, pp. 62–65.

<sup>71</sup> See, for example, Australian Broadcasting Corporation (ABC), *Submission 37*; Special Broadcasting Service (SBS), *Submission 64*; News Corp Australia, *Submission 61*; Free TV Australia, *Submission 72*.

<sup>72</sup> Public Interest Journalism Initiative, *Submission 82*, p. 5.

3.77 Free TV Australia stated that:

[C]ommercial free-to-air (FTA) television broadcasters take their obligations to provide accurate information to their audiences very seriously—not only because Free TV's members are bound by Australian law, but because providing accurate news content (and other content) is a principle that underpins audience trust. This is an important distinction between Free TV's members (and Australian media companies more broadly) and social media (and similar) digital platforms. Those digital platforms currently accept no liability for the content on their platforms.<sup>73</sup>

3.78 Similarly News Corp Australia stated:

We are already subject to every word of Australian common law. What is the pressing need to apply another layer of regulation to an already regulated industry when, on the other hand, you have a totally unregulated industry where all of this harm is actually happening?<sup>74</sup>

3.79 A number of media organisations also sought clarity on whether news websites and apps would be captured by the bill.

***Expanding the scope of the professional news exemption***

3.80 The Community Broadcasting Association of Australia (CBAA) raised concerns that the bill does not explicitly include community broadcasters in the professional news exemption. The CBAA highlighted that the community broadcasting sector's Codes of Practice are not specifically listed in the meaning of 'excluded dissemination':

The lack of explicit mention in this pivotal provision gives the impression that our sector (which has been subject to a co-regulatory Codes scheme since the inception of the *Broadcasting Services Act 1992*) is intended to be treated differently to other similarly regulated licensed broadcasters.<sup>75</sup>

3.81 The Public Interest Journalism Initiative also highlighted that, while a catch-all provision for analogous rules or codes is contained in the bill, 'the ambiguity risks differential enforcement for news sources whose codes are not specifically referenced, particularly on platforms that may not be familiar with the full range of Australian codes and standards'.<sup>76</sup>

3.82 To address these concerns, amendments were made to the bill in the House of Representatives on 7 November 2024, to extend the definition of 'professional

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<sup>73</sup> Free TV Australia, *Submission 72*, p. 5.

<sup>74</sup> Mr Campbell Reid, Group Executive Corporate Affairs, Policy and Government Relations, News Corp Australia, *Committee Hansard*, 17 October 2024, p. 58.

<sup>75</sup> Community Broadcasting Association of Australia (CBAA), *Submission 1*, p. 2.

<sup>76</sup> Public Interest Journalism Initiative, *Submission 82*, p. 5.

news content' to apply also to news content produced by a person who is subject to the rules of the Community Radio Broadcasting Codes of Practice.<sup>77</sup>

### *Opposing views on excluding professional news content*

- 3.83 In contrast, other submitters argued that the exemption for professional news content would undermine public trust in the news media by creating a perception of a two-tier system where professional outlets are not held accountable for spreading misinformation.
- 3.84 Digital Rights Watch, for example, argued that misinformation and disinformation exist and spread within a complex media environment that includes both mainstream media organisations and social media platforms. It contended that, similar to social media, there are strong financial incentives for mainstream media sources 'to create an information environment that sows doubt and legitimises disinformation'.<sup>78</sup>
- 3.85 RMIT FactLab outlined that in its role as a fact checker, that it is not uncommon for them to 'debunk false or misleading content posted on social media platforms by professional news organisations' such as photos used in a misleading manner, quotes used out of context or the articles that rely on inaccurate data.<sup>79</sup>
- 3.86 Several submitters, including Croakey Health Media and the AMAN Foundation, argued that existing industry codes and standards for professional news are insufficient to address the spread of misinformation and disinformation.
- 3.87 The AMAN Foundation outlined:
- These rules are entirely inadequate at addressing issues of accountability and transparency in news reporting, except in the fairly universal requirement to disclose any conflicts of commercial interests. The existing rules are not an appropriate substitute for the protections provided in the proposed Bill as they do not consider misinformation and disinformation and are far too old to adequately respond to the new digital platform and online media landscape.<sup>80</sup>
- 3.88 In addition, DIGI recommended that the Australian Government 'urgently take steps' to ensure that the Media Codes of Practice are amended to contain obligations on news media not to amplify misinformation and disinformation

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<sup>77</sup> *Supplementary Explanatory Memorandum*, p. 2.

<sup>78</sup> Digital Rights Watch, *Submission 35*, p. 7.

<sup>79</sup> RMIT FactLab, *Submission 85*, p. 3.

<sup>80</sup> Australian Muslim Advocacy Network Foundation, *Submission 29*, p. 8.

and to ensure that 'Australian media organisations are made accountable for their role in the digital ecosystem'.<sup>81</sup>

### **Reasonable dissemination of content including for any religious purpose**

#### *Support for the religious purpose exemption*

3.89 Some religious organisations emphasised that this exemption is crucial for safeguarding religious freedom and the right to express faith-based views online. For example, the Australian Catholic Bishops Conference welcomed the inclusion of 'religious purposes' within the meaning of excluded dissemination as a 'significant improvement on the exposure draft'. However, it raised concerns about what is considered 'reasonable' for the purposes of reasonable dissemination, and whether a religious purpose 'extends beyond religious institutions to Australians practicing or sharing their religious faith'.<sup>82</sup>

#### *Concerns about what constitutes 'reasonable dissemination'*

3.90 A number of religious organisations expressed concern about the lack of clarity of what constitutes 'reasonable dissemination' and suggested that this could lead to censorship. For example, the Combined Faith Leaders argued that that the 'reasonableness' test is highly inappropriate to be applied to religious speech.<sup>83</sup>

3.91 Some submitters also outlined concerns about digital platforms and social media companies over-censoring religious content, in particular. For example, Christian Schools Australia stated:

[W]hether a dissemination is a "reasonable dissemination for a religious purpose" is a vague standard that would be left to social media platforms to interpret and apply. Given the structure of the bill and the extraordinary financial risk due to civil penalties, social media companies are likely to interpret misinformation broadly, and therefore interpret exceptions for religious content narrowly.<sup>84</sup>

### **Clarifying the scope of the ACMA's role under the bill**

3.92 The inquiry heard wide-ranging views about the intended scope of the ACMA's role in regulating online content. These included concerns that the ACMA would be empowered to investigate and target individual pieces of content, request users to be banned, or determine what content would be misinformation or disinformation.

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<sup>81</sup> DIGI, *Submission 79*, pp. 16–17.

<sup>82</sup> Australian Catholic Bishops Conference, *Submission 40*, p. 4.

<sup>83</sup> Combined Faith Leaders, *Submission 70*, p. 6.

<sup>84</sup> Christian Schools Australia, *Submission 89*, pp. 1–2.

- 3.93 For example, some organisations contended that the ACMA would be provided powers to directly regulate content. The Australian Christians Party argued the bill would give the ACMA the power to regulate speech online creating 'a precedent of government overreach'.<sup>85</sup>
- 3.94 Similarly, the Australian Jewish Association expressed the concern of its members that 'it is not the role of a government or regulatory authority to censor political speech or opinion, nor should the government or regulatory authority be the arbiter of truth'.<sup>86</sup>
- 3.95 Other submitters highlighted the potential for the ACMA to 'indirectly' determine the types of content that digital platforms moderate through its role in setting and approving industry codes and standards and assessing digital platforms' compliance. For example, Professor Anne Twomey and the Victorian Bar contended that the ability to ensure that digital platforms comply with their obligations would rely on the ACMA assessing whether specific content aligns with the bill's proposed definitions.<sup>87</sup>
- 3.96 Professor Twomey stated that while the ACMA would not be a 'ministry of truth', it would be able 'to make some kind of assessment as to whether or not the platforms are adequately dealing with misinformation and disinformation'. This would therefore require the ACMA to make an assessment as to what is misinformation and disinformation.<sup>88</sup>
- 3.97 Similarly, the Victorian Bar stated:
- [t]he bill reposes in ACMA various powers to put forward misinformation code standards and the like, and to assess compliance by platforms against both statutory obligations and what's set out in codes and standards. But you can only tell whether the platform is properly identifying misinformation or properly complying with whatever is set out in the code by forming your own view as ACMA that the platform has properly done so. Precisely because the thing you assess is whether it has adequately responded to misinformation or disinformation, by definition, you have to have identified as ACMA what the misinformation or disinformation is to which there hasn't been an adequate response.<sup>89</sup>
- 3.98 The Human Rights Law Centre highlighted that digital platforms are already making these types of assessments, and outlined that the platforms are 'already

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<sup>85</sup> Australian Christians Party, *Submission 43*, p. 3.

<sup>86</sup> Australian Jewish Association, *Submission 83*, p. 1.

<sup>87</sup> Professor Anne Twomey, Private Capacity; Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar, *Committee Hansard*, 11 November 2024, pp. 1–10.

<sup>88</sup> Professor Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 2.

<sup>89</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar, *Committee Hansard*, 11 November 2024, p. 7.

taking actions on content as well as on accounts, whether to prioritise content or to monetise or demonetise content':

So these actions are already being taken by the platforms, and I think that it is important, while we're also just talking about balancing the rights to free speech, that we also take into account that these decisions are already being taken right now, and there is no way of knowing how those decisions are being made, who's making them—often these decisions are made by technology, so that raises other concerns.<sup>90</sup>

3.99 The Human Rights Law Centre further stated that the bill 'does need improvement', but would provide oversight over decisions already being made by digital platforms:

It is workable from a human rights perspective because it actually does go to giving some oversight over the decisions the platforms are already making on content. In fact, the platforms are the ones who are making the bulk of these decisions, either by technology or by having fact checkers or through a combination of the two, so I do think that that perspective is really important to also highlight.<sup>91</sup>

3.100 DITRDCA stated the proposed role of the ACMA, digital platforms and the definitions in the bill:

The definition of mis- and disinformation is important, because the platforms are required to have codes that deal with mis- and disinformation. They then need to comply with the codes that they submit to ACMA. ACMA will make a determination about whether or not they're complying with those codes. I anticipate...that part of that would be in response to what people are saying about how the codes are being complied with or not. There will be people who have an interest in that—citizens, members of the community and businesses who might say to ACMA that they've made these commitments to deal with mis- and disinformation, that they've raised concerns about information on those platforms and that they will deal with it under their codes, and they're not dealing with it. That might then trigger ACMA's own investigation about whether or not they're meeting the obligations they've signed up to under the code. Then there are all the other consequences that flow from that.<sup>92</sup>

### **Concerns raised relating to freedom of expression**

3.101 A significant number of individuals wrote to the committee expressing their concerns about the bill's potential or perceived, impacts on freedom of expression.

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<sup>90</sup> Mr David Mejia-Canales, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 2.

<sup>91</sup> Mr David Mejia-Canales, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 2.

<sup>92</sup> Mr James Chisholm, DITRDCA, *Committee Hansard*, 11 November 2024, p. 70.

- 3.102 Similar concerns were received by DITRDCA during its consultation on the Exposure Draft of the bill in 2023 as outlined in Chapter 1.
- 3.103 These submitters highlighted Australia's obligations under international human rights conventions that deal with freedom of expression, most notably the *International Covenant on Civil and Political Rights* (ICCPR), and the extent to which the bill is compatible with human rights law.<sup>93</sup>
- 3.104 The ICCPR aims to ensure the protection of a range of civil and political rights including freedom of expression, freedom of religion and belief, and freedom of association.<sup>94</sup> Article 19 of the ICCPR imposes Australia obligations to protect freedom of expression, while Article 19(3) of the ICCPR places strict limitations on when freedom of expression can be restricted. Any restrictions must meet the conditions of legality, necessity and proportionality, and legitimacy.<sup>95</sup>
- 3.105 Some religious organisations and civil liberty groups submitted that the provisions of the bill go beyond the limitations set out in the ICCPR. For instance, the Institute for Civil Society argued that the bill, in its current form, is 'not a limited, carefully targeted or strictly justified legal restriction on expression'. The Institute for Civil Society expressed concern that the definitions in the bill go beyond the legitimate restrictions on the exercise of freedom of expression as set out in the ICCPR of being necessary and proportionate.<sup>96</sup>
- 3.106 Similar concerns were expressed by religious organisations such as the ACL and the Combined Faith Leaders.<sup>97</sup> The ACL argued that the bill 'violates freedom of expression' stating:

Rather than identifying legitimate areas where censorship – observing the need for proportionality and necessity as established in international law, and carefully ensuring that the intervention is the least restrictive method of achieving the stated purpose of the intervention – the Bill establishes potentially limitless powers of censorship, tethered to vague and subjective definitions of "serious harm" (which defines aspects of "serious harm" merely in terms of "harm"!)) from which identified items are then excluded.<sup>98</sup>

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<sup>93</sup> See, for example, submissions from the ACL, *Submission 65*; Institute for Civil Society, *Submission 56*; Aligned Council of Australia, *Submission 81*.

<sup>94</sup> United Nations Human Rights, Office of the High Commissioner, [Background to the International Covenant on Civil and Political Rights and Optional Protocols](#).

<sup>95</sup> Nell Fraser and Jaan Murphy, 'Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024', *Bills Digest No. 14, 2024–25*, Parliamentary Library, Canberra, 23 October 2024, p. 6.

<sup>96</sup> Institute for Civil Society, *Submission 56*, pp. 1–2.

<sup>97</sup> See, for example, ACL, *Submission 65*, pp. 5–10; Combined Faith Leaders, *Submission 70*, p. 7.

<sup>98</sup> ACL, *Submission 65*, p. 6.

3.107 Other submitters, however, highlighted that there are legitimate boundaries to freedom of expression, and that freedom of expression is not the only right. The AMAN Foundation, for example, stated:

I would say that there are boundaries to that which our law provides. Vilification is one such boundary. Incitement of hatred, severe ridicule, contempt or anything that violates section 18C of the *Racial Discrimination Act* are legitimate bounds on freedom of expression, as has been found by our courts. Therefore, operations that are running like a business just to spread misinformation or disinformation about a group based on a protected characteristic to incite hatred do need to have some form of accountability.<sup>99</sup>

3.108 In a similar vein, the Human Rights Law Centre stated:

We would argue that it [the bill] can be strengthened to make sure that the oversight also includes recognition that the freedom of expression is not the only right and all other human rights—including the rights of the people who are very seriously harmed by misinformation and disinformation online—must be considered as well.<sup>100</sup>

3.109 The AHRC outlined that other regulators, such as the Information Commissioner, are required to consider human rights when exercising its powers under the *Privacy Act 1988*. While noting this is not directly analogous to how the ACMA's powers are provided for by the bill, the AHRC recommended that the bill be amended to more explicitly refer to the promotion of freedom of expression and the implementation of Australia's international obligations in relation to freedom of expression when the ACMA exercises its powers.<sup>101</sup>

3.110 Addressing these claims, DITRDCA acknowledged concerns that the bill may result in the widespread removal of users' content online, but was clear that:

Nothing in the bill or its rules, registered codes or standards may require platforms to delete content or ban accounts, unless the content is disinformation involving inauthentic behaviour, which potentially includes material spread from fake accounts, coordinated bots or troll farms.<sup>102</sup>

3.111 DITRDCA also provided evidence that it had consulted with the Australian Government Solicitor and the Attorney-General's Department, Office of International Law in the development of the bill.<sup>103</sup>

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<sup>99</sup> Ms Rita Jabri Markwell, Legal Adviser, Australian Muslim Advocacy Network, *Committee Hansard*, 11 November 2024, p. 26.

<sup>100</sup> Mr Mejia-Canales, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 9.

<sup>101</sup> AHRC, answers to questions on notice, 17 October 2024 (received 25 October 2024).

<sup>102</sup> DITRDCA, *Submission 74*, p. 5.

<sup>103</sup> Mr Andrew Hyles, Assistant Secretary, Digital Platforms, International and Policy Branch, DITRDCA, *Committee Hansard*, 11 November 2024, p. 68.

3.112 DITRDCA also outlined the various mechanisms in place to protect freedom of expression, noting that these requirements are very similar to the those set out under Article 19(3) of the ICCPR:

For example, the Bill requires that, prior to approving a code or determining a standard, the ACMA must be satisfied 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 misinformation or disinformation on the platforms, and goes no further is than reasonably necessary to provide that protection.<sup>104</sup>

3.113 In addition, digital platform rules, approved codes and standards will need to be accompanied by an Explanatory Statement setting out their compatibility with human rights.<sup>105</sup>

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<sup>104</sup> DITRDCA, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

<sup>105</sup> DITRDCA, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

## Chapter 4

# Transparency, integrity and compliance measures for digital platform providers

- 4.1 This chapter discusses the transparency, integrity and compliance measures contained in the provisions of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill), and inquiry participants' views on these measures.
- 4.2 This chapter outlines the bill's provisions and inquiry participant views relating to:
- current requirements for transparency and compliance in the voluntary *Australian Code of Practice on Disinformation and Misinformation* (the Code), and concerns identified by the Australian Communication and Media Authority (ACMA) about the effectiveness and operation of the Code;
  - the need for transparency and compliance strengthening measures in the bill;
  - the proposed requirement for digital platform providers to publish current media literacy plans; and
  - proposed measures for complaints handling and compliance.
- 4.3 The next chapter discusses views about the ACMA's proposed regulatory powers, and related transparency measures, under the bill.

### Current transparency requirements on digital platform providers

- 4.4 One of the bill's objectives is 'to increase transparency regarding the way in which digital communications platform providers manage misinformation and disinformation'.<sup>1</sup>
- 4.5 The bill's Explanatory Memorandum stated that this objective stemmed from a 'sharp increase in Australians' concerns about misinformation', and that Australians' concerns are 'well above the global average'.<sup>2</sup>

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<sup>1</sup> Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024, *Explanatory Memorandum*, p. 1.

<sup>2</sup> The Hon Michelle Rowland MP, Minister for Communications, *House of Representatives Hansard*, 12 September 2024, p. 7.

- 4.6 The bill would 'impose core transparency obligations on digital platforms requiring them to be upfront about what they are doing on their services to combat misinformation and disinformation'.<sup>3</sup>
- 4.7 Under the bill, digital platforms would be required to publish media literacy plans setting out how users of their platform would be better able to identify misinformation and disinformation. Further, digital platform providers would be required to publish their current policies for misinformation and disinformation, and the results of risk assessments for misinformation and disinformation on their services.<sup>4</sup>
- 4.8 The ACMA would be able to make digital platform rules which relate to media literacy plans, risk management plans, and complaints and dispute handling processes.<sup>5</sup>
- 4.9 The Office of the eSafety Commissioner (eSafety Commissioner) highlighted the mandatory industry codes and standards for online safety under the *Online Safety Act 2021*. These codes and standards 'now create an enforceable obligation on companies to take reasonable steps' towards mitigating the spread of harmful online content such as child sexual exploitation material.<sup>6</sup>
- 4.10 The eSafety Commissioner stated that, from its perspective, 'asking tech companies to explain how they are enforcing their own declared house rules does not seem unreasonable or out of step with existing regulatory schemes'. Further, the eSafety Commissioner stated that 'without meaningful transparency, there can be no accountability'.<sup>7</sup>

### **The operation of the voluntary industry code**

- 4.11 The bill's proposed transparency obligations are intended to broadly align with the objectives of the existing voluntary Code developed for digital communications platforms by the Digital Industry Group Inc (DIGI).<sup>8</sup>
- 4.12 The Code requires signatories to have systems and processes in place to minimise the risk of harm from misinformation and disinformation, and places

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<sup>3</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), *Submission 74*, p. 3.

<sup>4</sup> DITRDCA, *Submission 74*, p. 3.

<sup>5</sup> DITRDCA, *Submission 74*, p. 3.

<sup>6</sup> eSafety Commissioner, Opening Statement, Public Hearing 17 October 2024.

<sup>7</sup> eSafety Commissioner, Opening Statement, Public Hearing 17 October 2024.

<sup>8</sup> *Explanatory Memorandum*, p. 66. The code came into effect in 2021, and as discussed in previous chapters, currently has nine signatories: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok, Twitch, and Legitimate (an AI tool used by journalists). Australian Communications and Media Authority (ACMA), *Submission 3*, p. 1.

responsibility on platform providers to determine whether content contravenes their policies.<sup>9</sup>

- 4.13 TikTok, one of the signatories to the Code, described the voluntary Code as 'a blueprint for addressing the complex and multifaceted challenge of harmful online misinformation and disinformation at scale'.<sup>10</sup>
- 4.14 The Code places a mandatory commitment on digital platform providers to implement measures to publish an annual transparency report.<sup>11</sup> Transparency reports provided to DIGI under the Code have shown that significant amounts of content were identified as violating misinformation policies in 2023. For example, TikTok removed 28 511 pieces of content for violating misinformation policies in 2023, and warnings were displayed on more than 9.2 million distinct pieces of content on Facebook, and more than 510 000 on Instagram in Australia.<sup>12</sup>
- 4.15 Snap Inc. noted that it is the 'only major platform to provide country-specific information about reports received, and our responses to these, in all the countries in which we operate around the world'. Snap Inc. stated that there is no regulatory mandate to provide this additional information, and that the ACMA should recognise 'responsible efforts to provide transparency information when considering application of its powers'.<sup>13</sup>

#### **ACMA's recommendations to strengthen the Code's transparency measures**

- 4.16 As discussed in Chapter 1, the voluntary Code's operation and effectiveness has been reviewed by the ACMA three times since its development. The ACMA has consistently raised the need for industry to improve the quality of its reporting against the Code.<sup>14</sup>
- 4.17 The first of the ACMA's three reports to the Australian Government, in 2021, put forward recommendations intended to strength transparency. These included new powers to make record-keeping rules, and new powers to register industry codes, enforce industry code compliance and make standards for the activities of digital platforms' corporations.<sup>15</sup>

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<sup>9</sup> ACMA, *Submission 3*, p. 1.

<sup>10</sup> TikTok, *Submission 91*, p. 3.

<sup>11</sup> ACMA, *Submission 3*, p. 1.

<sup>12</sup> Australian Associated Press, *Submission 36*, p. 3. Meta attributed the identification of misinformation on its platforms to the work of third-party fact-checking partners.

<sup>13</sup> Snap Inc., *Submission 63*, p. 9.

<sup>14</sup> ACMA, *Submission 3*, p. 1.

<sup>15</sup> ACMA, *Submission 3*, p. 1.

4.18 The ACMA's reports outline observations on the effectiveness of transparency arrangements in the Code, including that:

- there remains an urgent need to improve the level of transparency about the measures platforms are taking to address misinformation and their effectiveness
- better reporting by signatories is needed to enable an assessment of progress and impact
- industry needs to take further steps to review the scope of the code and its ability to adapt quickly to technology and service changes
- transparency reports lack sufficient levels of consistent Australian trended data either by individual signatories or across signatories
- data integrity issues limit insights into the effectiveness of some signatories' measures and undermine the ability of Australians to be confident that platforms are delivering on their commitments
- there is no discernible progress towards developing key performance indicators (KPIs) by both individual signatories and across the code.<sup>16</sup>

4.19 The ACMA stated that the recommendations set out in their 2021 report 'remain relevant and their implementation is more urgent than ever, given community concern'. The ACMA stated that the bill would enable it to collect information to improve transparency of digital platforms, including those platforms which are not signatories to the Code.<sup>17</sup>

4.20 The ACMA considered that the bill's provisions would 'significantly improve current arrangements and provide greater confidence to Australians that mis/disinformation was being actively addressed by digital platforms'.<sup>18</sup>

### **Views that the code should be strengthened**

4.21 Reset Tech Australia highlighted its previous research, which had documented that the existing accountability mechanisms within the Code are deficient.<sup>19</sup> Similarly the Australian Communications Action Network noted that voluntary industry codes can lead to weak compliance and falling consumer trust, citing the Telecommunications Consumer Protection Code.<sup>20</sup>

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<sup>16</sup> ACMA, *Submission 3*, p. 2.

<sup>17</sup> ACMA, *Submission 3*, p. 2.

<sup>18</sup> ACMA, *Submission 3*, p. 2.

<sup>19</sup> Reset Tech Australia, *Submission 25*.

<sup>20</sup> Australian Communications Consumer Action Network, answers to written questions on notice from Senator Lisa Darmanin, 14 October 2024 (received 17 October 2024).

4.22 The Australian Forest Products Association was supportive of the bill's intention to 'address the identified shortcomings of the voluntary code of practice on disinformation and misinformation through greater regulation'.<sup>21</sup>

4.23 According to the ACMA, as the Code is voluntary, 'there is no regulatory backstop to either compel digital platforms to become signatories or hold them accountable if they breach their obligations'.<sup>22</sup> The ACMA gave the following example of an original signatory to the Code failing to meet the requirements:

X Corp (an original code signatory) lost its signatory status in November 2023 after the code's Independent Complaints Subcommittee found that it had committed a serious breach of the code for failing to provide a mechanism to the public to make reports of breaches of its misinformation policies for an extended period. This was the strongest enforcement option available to the Subcommittee. While this decision demonstrates that the code's governance arrangements are functional, it also highlights the limitations of voluntary arrangements.<sup>23</sup>

4.24 DITRDCA explained the need for the bill's transparency and integrity measures:

The ACMA has continuously highlighted the need for industry to improve the quality of its monitoring and reporting against the voluntary code's outcomes, noting that a robust performance measurement framework is critical to its success. The ACMA has found that the transparency reports made under the voluntary code lack consistent, trended, Australia-specific data on the effectiveness of digital platforms' efforts to address misinformation and disinformation on their services.<sup>24</sup>

4.25 Further, DITRDCA stated that the bill's provisions were required to address the need for stronger transparency:

It is increasingly clear that existing regulation is insufficient in dealing with seriously harmful misinformation and disinformation. Digital communications platform providers are not incentivised to proactively promote an online information environment that minimises the spread of misinformation and disinformation.<sup>25</sup>

### **Support for greater transparency of digital platforms**

4.26 There was broad support for increased transparency and accountability of digital platforms, including their approach to content moderation.

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<sup>21</sup> Australian Forest Products Association, *Submission 39*, p. 2.

<sup>22</sup> ACMA, *Submission 3*, p. 1.

<sup>23</sup> ACMA, *Submission 3*, p. 1.

<sup>24</sup> DITDRCA, *Submission 74*, pp. 2–3.

<sup>25</sup> DITDRCA, *Submission 74*, pp. 2–3.

4.27 The eSafety Commissioner stated that while the main technology companies have made public commitments to ensure that platforms are doing the right thing, it is very difficult to evaluate effectiveness:

All the main technology companies have made public commitments to ensuring their platforms do not become havens of lies, deception, deceit and polarisation.

They also have rules to combat harmful content and conduct because online toxicity does not attract advertisers or help retain users.<sup>26</sup>

4.28 The eSafety Commissioner noted that digital platform policies promise strong measures to tackle misinformation and disinformation, including: human and automated fact-checking and moderation; warnings and labels for suspected misinformation and disinformation; promoting authoritative sources; user reporting; and, penalties. However, the eSafety Commissioner was not assured of their success, and stated that 'the answer is we don't really know' whether these policies work.<sup>27</sup>

4.29 The Department of Home Affairs (Home Affairs) welcomed the bill and 'its flow on implications for efforts to strengthen social cohesion and democratic resilience'. Home Affairs explained that the proposed transparency obligations would enhance its ability to understand the nature and extent of current risks which are posed by misinformation and disinformation.<sup>28</sup>

4.30 Officials from Home Affairs expressed support for measures which 'empower users to form their own views and advance their own critical thinking about those issues'.<sup>29</sup> Home Affairs stated that:

We would also point to, again, the transparency obligations of this bill as a contribution to increasing the supply of trustworthy and credible information within the public debate, including the ability of government but also end users to understand the risks and the information flows, the content and nature of that information, balanced with appropriate protections for freedoms within our democracy.<sup>30</sup>

4.31 The Mudgee District Environment Group supported action to prevent misinformation and disinformation, stating that increased transparency for Australians to assess information would work to 'assure the Australian people that the information they have access to is true and correct'.<sup>31</sup>

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<sup>26</sup> Office of the eSafety Commissioner, Opening Statement, tabled 17 October 2024.

<sup>27</sup> Office of the eSafety Commissioner, Opening Statement, tabled 17 October 2024.

<sup>28</sup> Department of Home Affairs, *Submission 87*, p. 6.

<sup>29</sup> Ms Jeni Whalan, First Assistant Secretary, Office of Community Cohesion, Department of Home Affairs, *Committee Hansard*, 11 November 2024, p. 44.

<sup>30</sup> Ms Whalan, Department of Home Affairs, *Committee Hansard*, 11 November 2024, p. 44.

<sup>31</sup> Mudgee District Environment Group, *Submission 46*, p. 1.

- 4.32 While the Fighting Harmful Online Communication Hallmark Research Initiative at the University of Melbourne supported measures to inform digital platform users, it suggested that there is a lack of detail as to 'how plans should be written to satisfy the changes being proposed in this bill'.<sup>32</sup>
- 4.33 The ACMA explained that its role is firstly to oversee and enforce transparency provisions, including measures related to the publication of policies, risk assessment reports and media literacy policies. The ACMA's proposed powers related to setting rules in relation to these issues, and complaints handling, would be part of this role.<sup>33</sup> The ACMA stated that 'the parameters around which we can make these decisions are quite specifically set out in the bill'.<sup>34</sup>
- 4.34 ACMA's proposed powers under the bill are addressed in the next chapter.

### **Concerns raised in relation to the proposed transparency and integrity measures**

- 4.35 Inquiry participants put forward a range of views relating to provisions in the bill relating to transparency and integrity.

### **Concerns over government accountability**

- 4.36 Strong concerns were raised in relation to accountability for government. The Australian Christians Party, for example, considered that the bill had a lack of accountability for government which was 'the most troubling aspect'. The Australian Christians Party stated:

Exemptions for government content, combined with the broad powers granted to ACMA, create an environment where the government can silence dissent without consequence. Transparency and accountability are critical to maintaining public trust, and this Bill offers neither. Freedom of speech belongs to all Australians, not just to those who align with the government's views.<sup>35</sup>

- 4.37 A key change from the 2023 Exposure Draft of the bill was to refine the categories of content that would be excluded from the bill to strengthen accountability while reinforcing the protections for freedom of speech. This includes removing the exclusion for government-authorized content and authorized electoral matter from this bill.<sup>36</sup>
- 4.38 The Australian Christian Lobby stated that 'Government transparency and a willingness to be held accountable is an essential prerequisite for the trust that

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<sup>32</sup> Fighting Harmful Online Communication, *Submission 30*, p. 3.

<sup>33</sup> Ms Creina Chapman, Deputy Chair, ACMA, *Committee Hansard*, 11 November 2024, p. 53.

<sup>34</sup> Ms Chapman, ACMA, *Committee Hansard*, 11 November 2024, p. 54.

<sup>35</sup> Australian Christians Party, *Submission 43*, p. 4.

<sup>36</sup> DITRDCA, *Submission 74*, p. 5.

enables democracy in Australia'. It considered that the bill proposes to limit transparency.<sup>37</sup>

### **Protections for independent fact-checking services**

4.39 The Australian Associated Press (AAP) considered that the bill's provisions 'positions third-party fact-checkers as stakeholders, and would allow employees of organisations like AAP FactCheck to be called upon to provide information and documents to the ACMA. AAP FactCheck stated that it reports to the platforms in line with their record-keeping requirements, and considered that the bill's provisions could discourage platforms from engaging fact-checking organisations 'for fear they may be compelled by [the] ACMA to reveal otherwise confidential information'.<sup>38</sup>

### **Proposed media literacy plans provisions**

4.40 As set out in Chapter 2, the bill would impose certain requirements on digital communication platform providers including to publish a current media literacy plan for their platform setting out the measures the platform will take to enable end-users to better identify misinformation and disinformation and identify the source of content disseminated on the platform.<sup>39</sup>

4.41 Inquiry participants provided a range of views on the bill's provisions relating to the publication of current media literacy plans by digital platform providers.

### **Support for the bill's media literacy plan provisions**

4.42 The Institute for Civil Society supported the bill's provisions for transparency in media literacy plans, arguing that this will 'empower' users of digital platforms 'to better identify misinformation and disinformation'.<sup>40</sup>

4.43 Reset Tech suggested that 'a single, coordinated repository of information, administered by ACMA' would make it easier for the public to access the media literacy plans and policies of digital platforms:

We note that the Bill (s 17) provides for digital platforms to publish their risk assessment report, misinformation and disinformation policies, a media literacy plan, and other information specified in digital platform rules. We commend the spirit of this section, but note that it would be more straightforward for public users to access a single, coordinated repository of information, administered by ACMA.<sup>41</sup>

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<sup>37</sup> Australian Christian Lobby, *Submission 65*, p. 3.

<sup>38</sup> Australian Associated Press, *Submission 36*, p. 5.

<sup>39</sup> *Explanatory Memorandum*, pp. 67–69.

<sup>40</sup> Institute for Civil Society, *Submission 56*, 2.

<sup>41</sup> Reset Tech Australia, *Submission 25*, p. 5.

4.44 Home Affairs particularly welcomed the bill's proposed requirement for digital platforms to publish a media literacy plan:

Greater transparency around these plans will mean the Department can also better target its media literacy efforts in response to specific risks (e.g., foreign interference) in a manner that complements and is consistent with various digital platform efforts.<sup>42</sup>

### **Opposing views regarding media literacy plans**

4.45 Digital Industry Group Inc (DIGI), the digital industry peak body, did not support the proposed requirement to publish current media literacy plans, and argued that media literacy should 'be part of a coordinated, systematic and evidenced informed literacy policy, developed and implemented by government'.

4.46 Further, DIGI stated that this should use 'input from stakeholders including educators at the primary and secondary school level, vocational educators, and educators at higher education institutions'.<sup>43</sup> According to DIGI, 'delegating this responsibility will lead to fragmented, inconsistent approaches and are unlikely to be effective'.<sup>44</sup>

4.47 DIGI representatives elaborated on its views, and stated that there are a number of low-risk businesses which would be subject to mandatory media literacy plans including large and small-scale content aggregators.<sup>45</sup> DIGI stated that product review sites which aggregate information relating to things such as road conditions, travel and hobbies would be required to have a media literacy plan, which would be an 'onerous requirement'.<sup>46</sup>

### **Industry reporting and data**

4.48 The bill proposes to introduce greater transparency and accountability requirements for digital communication platforms, including the publishing of the results of their risk assessments relating to misinformation and disinformation on their platforms. Inquiry participants put forward a range of views on these provisions.

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<sup>42</sup> Department of Home Affairs, *Submission 87*, p. 6.

<sup>43</sup> Digital Industry Group Inc, *Submission 79*, p. 30.

<sup>44</sup> Digital Industry Group Inc, *Submission 79*, p. 30.

<sup>45</sup> Dr Jennifer Duxbury, Director, Policy, Regulatory Affairs and Research, Digital Industry Group Inc, *Committee Hansard*, 17 October 2024, p. 9.

<sup>46</sup> Digital Industry Group Inc, Opening Statement, Public Hearing 17 October 2024.

### **Calls for the bill's industry reporting provisions to be strengthened**

4.49 Reset Tech argued that the bill should be strengthened to improve public accountability and transparency by requiring that the ACMA release all industry reports and data submitted to it within a reasonable period:

For completeness, it would be prudent to prevent potential content carve-outs and provide expressly that any further materials submitted to ACMA by platforms are also provided to the public via this repository after a reasonable period of time. The effect of this is there is a central location for comprehensive information on the outputs generated by the Bill, including information made available to the regulator. This extra step of public transparency is, in our view, key for building public trust and understanding of the Bill's functionality.<sup>47</sup>

4.50 Similarly, the Australian Democracy Network called for industry reports and data submitted to the ACMA to be publicly released. The network stated that while the bill would provide for the ACMA to be able to publish certain information on its website, 'it creates no obligation to do so'. To enhance transparency, and therefore improve public trust, 'it's vital that ACMA doesn't become a black box for information about platform measures to curb misinformation and disinformation'.<sup>48</sup>

4.51 The Human Rights Law Centre also recommended that reports submitted to the ACMA under digital platform rules should be publicly released. It suggested that the ACMA create a 'single, coordinated repository for public users' to access the digital platforms' risk assessment reports, misinformation and disinformation policies, and media literacy plans 'in the bill's current provisions as well as the recommended additional information'.<sup>49</sup>

### **Concern about the regulatory burden**

4.52 Other submitters, including digital platforms, highlighted the additional regulatory burden imposed by the proposed reporting provisions.

4.53 Snap Inc., the technology company responsible for Snapchat, was concerned at the potential impact of the increased regulation on the digital platforms market in Australia:

Ultimately, the companies who are best served by overly burdensome and complex regulation are the largest firms, with the largest compliance teams, who can easily deal with the bureaucracy involved, while smaller companies struggle to handle the workload.<sup>50</sup>

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<sup>47</sup> Reset Tech, *Submission 25*, p. 5.

<sup>48</sup> Australian Democracy Network, *Submission 59*, p. 4.

<sup>49</sup> Human Rights Law Centre, *Submission 60*, p. 15.

<sup>50</sup> Snap Inc., *Submission 63*, p. 8.

- 4.54 It stated that any new powers conferred on the ACMA should be 'exercised in a risk-based and proportionate way that minimises unnecessary bureaucratic and administrative burden on industry participants'. Snap Inc. also stated that responding to regulatory requests for information, complying with regulatory codes or practice or standards, and providing transparency information 'requires significant time and resources'.
- 4.55 Snap Inc. recommended that the bill be amended to require the ACMA to 'consider existing efforts made by digital platform service providers to publish transparency information before exercising its [proposed] new powers related to information-gathering or code development'.<sup>51</sup>

### **Complaints and dispute handling**

- 4.56 As part of its administration role, DIGI can accept and investigate complaints about platforms' alleged breaches of the Code, and as noted below, can investigate and withdraw a company from the Code if necessary.<sup>52</sup>
- 4.57 The bill would empower the ACMA to make rules requiring digital communications platform providers to implement and maintain a process for handling complaints and resolving disputes about misinformation and disinformation.<sup>53</sup>
- 4.58 As set out in the Explanatory Memorandum, these rules, could for example, require digital platform providers to implement and maintain complaints and dispute handling processes regarding misinformation, or to set minimum standards for these processes.<sup>54</sup>

### **Calls for the provisions in the bill to be strengthened**

- 4.59 The Australian Communications Consumer Action Network, the peak body for consumers on communications issues, suggested that the bill should empower the ACMA to set minimum complaints and dispute handling processes for all types of complaints on digital platforms, rather than only those relating to misinformation and disinformation. It also suggested allowing complaints to be elevated to an independent third-party body such as the Telecommunications Industry Ombudsman.<sup>55</sup>

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<sup>51</sup> Snap Inc, *Submission 63*, p. 1.

<sup>52</sup> Digital Industry Group Inc, [Complaints](#) (accessed 15 November 2024).

<sup>53</sup> *Explanatory Memorandum*, p. 66.

<sup>54</sup> *Explanatory Memorandum*, p. 81.

<sup>55</sup> Australian Communications Consumer Action Network, answers to written questions on notice from Senator Darmanin, 14 October 2024 (received 17 October 2024).

### **Calls for an appeals process**

4.60 The Institute of Public Affairs (IPA) was strongly opposed to the bill, including its proposed measures for complaints handling. The IPA stated that Australians whose content is found to violate the bill's provisions for misinformation and disinformation would not have a right of appeal or review against the decision made by the ACMA, and that:

An aggrieved Australian may lodge a complaint with the digital platform, but the platforms are private entities and as such are not bound by the rule of evidence and the common law protections for procedural fairness.<sup>56</sup>

4.61 The Institute for Civil Society also stated that the bill 'does not guarantee a right of appeal against any decision made by [the] ACMA', and that the bill would delegate the decision as to whether something may be subject to appeal through regulations. The Institute called for this to 'require direct Parliamentary endorsement'.<sup>57</sup>

4.62 The Combined Faith Leaders was also concerned at the 'conspicuous lack of appeal rights and transparency with regard to removed content'.<sup>58</sup> The Combined Faith Leaders called for an appeals process for individuals whose content is considered to be misinformation or disinformation, with the individual to be told immediately of the occurrence with the reasons provided. Independent review bodies should be available to review decisions upon appeal, with the information published.<sup>59</sup>

4.63 This concern was echoed by a representative of the Victorian Bar, who stated that the bill does not have 'any obvious redress for people whose content is wrongly labelled as being misinformation'.<sup>60</sup>

4.64 DITRDCA's submission made it clear that the bill would allow the ACMA to create digital platform rules dealing with complaints and dispute handling processes, and requiring platforms to keep and report on specific information such as the number of complaints and reports about misinformation and disinformation made by Australian users. DITRDCA also stated that a number of decisions by the ACMA could be reviewed in the Administrative Review Tribunal.<sup>61</sup>

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<sup>56</sup> Institute of Public Affairs, *Submission 44*, p. 13.

<sup>57</sup> Institute for Civil Society, *Submission 56*, p. 8.

<sup>58</sup> Combined Faith Leaders, *Submission 70*, p. 2.

<sup>59</sup> Combined Faith Leaders, *Submission 70*, p. 10.

<sup>60</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 6.

<sup>61</sup> DITRDCA, *Submission 74*, p. 3, p. 11.

## Compliance measures

### Concerns that the bill will lead to 'over censorship'

4.65 The IPA put forward concerns that the bill would incentivise 'over-compliance with obligations to censor, whereas digital platforms are under no obligation to protect freedom of speech'. The IPA highlighted provisions relating to financial penalties on digital communications platform providers for non-compliance with standards for misinformation the IPA characterised as 'vague'. The IPA stated that this 'will incentivise platforms to excessively censor to mitigate risk'.<sup>62</sup>

4.66 The IPA stated that while the bill proposes obligations and penalties for the failure to manage content, 'similar obligations and penalties do not apply in situations where a platform censors content that is not misinformation'.<sup>63</sup>

4.67 The IPA further stated that there is a conflict between 'censoring content' to address the risks of misinformation and the principle of freedom of speech:

For the digital platforms, the material risk is only on one side of the conflict. If contentious information is being circulated on a digital platform, censoring that information comes at no cost to the platform. But there is a significant potential cost for the same information being left to circulate. If in doubt, the platforms are incentivised to censor so as to mitigate risk.<sup>64</sup>

4.68 Similarly, the Institute for Civil Society raised concerns that private sector organisations (the digital communications platform providers) would be required to implement the bill's provisions. The Institute argued that platform providers have a 'tendency ... to over-censor', and called for 'maximum transparency as to what information is being censored', and for 'the right to rapid review and redress when material is incorrectly labelled 'misinformation' or 'disinformation'.<sup>65</sup>

4.69 The Combined Faith Leaders also raised concerns that digital platform providers might be 'highly motivated to over-censor content'. The Combined Faith Leaders highlighted existing concerns over the platforms' ability to remove or affect access to content and considered that the bill would provide the ability for platforms to 'claim Government approval—and even mandate—for removing posts, shadow banning, and other forms of censorship'. They stated that:

Digital content platform providers are privately owned or publicly traded companies with a primary responsibility to maximise profit and share value. It would be foolish to rely on these organisations to prioritise freedom of

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<sup>62</sup> Institute of Public Affairs, *Submission 44*, p. 13.

<sup>63</sup> Institute of Public Affairs, *Submission 44*, p. 13.

<sup>64</sup> Institute of Public Affairs, *Submission 44*, p. 13.

<sup>65</sup> Institute for Civil Society, *Submission 56*, p. 2.

speech, the good of society, or anything other than profit. By and large, these organisations do not have a history of behaving in the public interest.<sup>66</sup>

#### 4.70 DITRDCA's submission states:

Nothing in the Bill enables the ACMA to take down individual pieces of content or user accounts. The Bill takes a system level approach and digital platforms would remain responsible for managing content on their services.<sup>67</sup>

...

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.<sup>68</sup>

...

[T]he 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.<sup>69</sup>

### **Expanding data access for researchers and fact checkers**

4.71 Various submitters and witnesses to the inquiry advocated for expanding access to digital platform data for researchers and fact checkers in Australia, with some citing the European Union's *Digital Services Act 2022* as an example of legislation that mandates data access for researchers.<sup>70</sup>

4.72 Reset Tech Australia stated that it had been 'concerned since the exposure draft stage that there won't be enough public accountability and transparency', calling for researchers to be able to examine misinformation in Australia. It drew attention to challenges faced by independent researchers accessing data as platforms may limit access to their data.<sup>71</sup>

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<sup>66</sup> Combined Faith Leaders, *Submission 70*, p. 9.

<sup>67</sup> DITRDCA, *Submission 74*, p. 4.

<sup>68</sup> DITRDCA, *Submission 74*, p. 11.

<sup>69</sup> DITRDCA, *Submission 74*, p. 11.

<sup>70</sup> See for example, Reset Tech Australia, *Submission 25*.

<sup>71</sup> Miss Alice Dawkins, Executive Director, Reset Tech Australia, *Committee Hansard*, 11 October 2024, p. 15.

- 4.73 Similarly, the Human Rights Law Centre outlined that '[a]t present, platforms are not voluntarily providing key data to researchers in Australia that would allow independent review'.<sup>72</sup>
- 4.74 The Australian Muslim Advocacy Network Foundation recommended the immediate access of digital platforms data relating to misinformation and disinformation for accredited independent researchers. This should also be extended to capture data from the ACMA about its requests to digital platforms under the bill.<sup>73</sup>

#### **Government amendments made in the House of Representatives**

- 4.75 As outlined previously, on 7 November 2024 the House of Representatives passed several amendments to the bill. These included proposed data-related measures to require digital communications platform providers to publish information regarding their policy or policy approach for supporting access by researchers, and providing the ACMA with the power to make digital platform rules to establish one or more data access schemes.
- 4.76 As set out in the *Supplementary Explanatory Memorandum*, the data access related amendments reflect 'increasing recognition worldwide of the value of independent research about misinformation and disinformation on digital communications platforms'. This includes developments in other jurisdictions, including the European Union to implement a data access scheme supporting independent research.<sup>74</sup>
- 4.77 The Human Rights Law Centre indicated it supported these amendments.<sup>75</sup>

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<sup>72</sup> Human Rights Law Centre, *Submission 60*, p. 14.

<sup>73</sup> Australian Muslim Advocacy Network Foundation, *Submission 29*, p. 5.

<sup>74</sup> *Supplementary Explanatory Memorandum*, p. 2.

<sup>75</sup> Mr David Mejia-Canales, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 3.



# Chapter 5

## Proposed powers for the Australian Communications and Media Authority

- 5.1 This chapter outlines the key issues raised during the inquiry about the Australian Communications and Media Authority's (ACMA) proposed regulatory powers under the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill).
- 5.2 This includes views about the ACMA's proposed information-gathering powers, industry code and standard making powers, enforcement powers and the penalty provisions in the bill as well as the transparency of the ACMA's decision making.
- 5.3 The following chapter concludes with the committee's view and recommendations.

### **The ACMA's proposed regulatory powers under the bill**

- 5.4 As discussed in Chapter 2, the bill would provide the ACMA with a range of regulatory powers to address misinformation and disinformation on digital communications platforms, including the ability to make digital platform rules.
- 5.5 The ACMA would be given certain information-gathering and record keeping powers, and the ability to approve an industry code of practice or determine a misinformation standard.
- 5.6 As noted in a previous chapter, the ACMA stated that it would not have a role in assessing the seriousness of harm under the bill. The ACMA also stated it would not determine what constitutes misinformation and disinformation.<sup>1</sup> Submitter views about the scope of the ACMA's role in determining misinformation and disinformation is set out in Chapter 3.
- 5.7 The ACMA outlined that it has developed expertise in relation to digital platform activities including their efforts to address misinformation and disinformation in Australia. This includes its role in overseeing industry efforts under the *Australian Code of Practice on Disinformation and Misinformation* (the Code) since 2021.<sup>2</sup>

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<sup>1</sup> Australian Communications and Media Authority (ACMA), written questions on notice from Senator Grogan, 22 October 2024 (received 1 November 2024).

<sup>2</sup> ACMA, written questions on notice from Senator Grogan, 12 November (received 13 November 2024).

- 5.8 The ACMA further outlined that it would 'leverage its experience overseeing compliance with transparency requirements and co-regulation of codes of practice for the broadcasting and telecommunications industries when undertaking compliance and enforcement activities under this bill'.<sup>3</sup>
- 5.9 Diverse views were expressed about the scope and effectiveness of the ACMA's proposed regulatory powers as provided for in the bill, and are set out below.

### **Proposed information-gathering powers**

- 5.10 Under the bill, the ACMA would have the power to obtain information from digital platforms, and make rules requiring them to create and retain records relating to misinformation and disinformation. Digital platform providers could be required to provide reports to the ACMA periodically.<sup>4</sup>
- 5.11 The bill provides for protections for end-users of digital platforms in Australia, by limiting the type of individuals required to produce information or documents to: 'a platform employee, content moderator, fact checker or a person providing services to the provider of the digital platform'.<sup>5</sup>
- 5.12 The Department of Infrastructure, Transport, Regional Development, Communication and the Arts (DITRDCA) stated that these powers would enhance transparency, and allow the regulator to track the progress of digital platforms in addressing misinformation and disinformation on their services.<sup>6</sup>
- 5.13 This would allow the ACMA to gain insights into the extent of misinformation and disinformation on digital platforms and the effectiveness of measures to combat its spread, including the effectiveness of voluntary codes, approved misinformation or misinformation standards.<sup>7</sup> DITRDCA also outlined that these provisions would 'set a clear expectation that digital platforms must be transparent with the Australian public'.<sup>8</sup>
- 5.14 The bill would also allow the ACMA to obtain information and documents from a wider range of sources than digital communications platform providers.
- 5.15 Officials from the ACMA stated that it would use the proposed information-gathering powers to assess whether a code made under the bill is operating effectively, and would use data collected under the new

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<sup>3</sup> ACMA, written questions on notice from Senator Grogan, 12 November (received 13 November 2024).

<sup>4</sup> Department of Infrastructure, Transport, Regional Development, Communication and the Arts (DITRDCA), *Submission 74*, p. 3.

<sup>5</sup> DITRDCA, *Submission 74*, pp. 3–4.

<sup>6</sup> DITRDCA, *Submission 74*, p. 3.

<sup>7</sup> *Explanatory Memorandum*, p. 90.

<sup>8</sup> DITRDCA, *Submission 74*, p. 3.

information-gathering powers or record keeping rules, or research conducted by the ACMA:

By gathering that information, we are able to ascertain whether their processes and systems are actually working. We would seek to know, for example, how they're handling their complaints? How many complaints are they receiving and resolving? We're not particularly interested in what those complaints may be about, but the system and the process that they've put in place. Have they employed fact checkers? Have they done what they said they would do under the voluntary code as it exists at the moment. We'd probably make an assessment against that voluntary code to some extent when we're deciding whether there is a need to take the next step forward.<sup>9</sup>

- 5.16 ACMA officials noted that the proposed information-gathering powers could be used to increase transparency around the use of algorithms and recommender systems on services in future.<sup>10</sup>

### *Concern about the breadth of the information-gathering powers*

- 5.17 Several submitters expressed concern that the bill would provide the ACMA with too broad information-gathering powers.<sup>11</sup> For example, the Institute of Public Affairs characterised the ACMA's proposed powers as 'coercive' and were of the view that these proposed powers could 'violate fundamental legal rights' including the right to silence and the privilege against self incrimination.<sup>12</sup>
- 5.18 Australians for Science and Freedom contended that the proposed information gathering powers would enable the 'ACMA to act as a spy agency, keeping dossiers on people who have been "wrong" on the internet'.<sup>13</sup>
- 5.19 The Public Interest Journalism Initiative and Digital Rights Watch expressed concern about the breadth of these proposed powers, highlighting 'the absence of parliamentary oversight or review in relation to the exercise of these powers' and the absence of any requirement that personal or sensitive information be exempted from disclosure or anonymised.<sup>14</sup>
- 5.20 Similarly the Digital Industry Group (DIGI), while supportive of the ACMA being granted the power to require platforms to keep and provide records and information concerning misinformation and disinformation on their services,

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<sup>9</sup> Ms Creina Chapman, Deputy Chair, ACMA, *Committee Hansard*, 11 November 2024, p. 55.

<sup>10</sup> Ms Kelly Mudford, Manager, Disinformation and Platforms, ACMA, *Committee Hansard*, 11 November 2024, p. 73.

<sup>11</sup> See, for example, Institute of Public Affairs, *Submission 44*, [p. 21]; Digital Rights Watch, *Submission 35*, p. 6.

<sup>12</sup> Institute of Public Affairs, *Submission 44*, p. 14; Digital Rights Watch, *Submission 35*, p. 6.

<sup>13</sup> Australians for Science and Freedom, *Submission 17*, p. 7.

<sup>14</sup> Public Interest Journalism Initiative, *Submission 82*, p. 4.

argued that these powers 'remain broadly drafted and do not sufficiently restrict the ACMA's discretion to request information to the policy intent of the bill'.<sup>15</sup>

5.21 The Australian Broadcasting Corporation recommended that the information-gathering powers in the bill should be subject to similar limitations as those contained in the *Broadcasting Services Act 1992*, including protection of journalists' sources.<sup>16</sup>

### **The ability to approve industry codes and register a misinformation standard**

5.22 As set out in Chapter 2, the ACMA would have the power to approve and register enforceable misinformation codes developed by sections of the digital platforms industry, and in certain circumstances, determine misinformation standards for sections of the digital platforms industry.<sup>17</sup>

5.23 A code or standard could include obligations on platforms to have robust systems and processes in place such as reporting tools, links to authoritative information, support for fact checkers and 'demonetisation' of disinformation.<sup>18</sup>

### **Support expressed for the ACMA's code approval and misinformation standard powers**

5.24 Reset Tech Australia, a research organisation focused on digital risks, expressed support for enhanced regulatory powers for misinformation and disinformation, citing failures in the existing transparency and accountability mechanisms under the existing voluntary code (the *Australian Code of Practice for Misinformation and Disinformation*):

... the threshold for ACMA to develop an industry standard has long passed  
... ACMA should be immediately empowered to bypass industry codes and set a standard ...<sup>19</sup>

5.25 The Australian Communications Consumer Action Network, the peak body for consumers on communications issues, argued that the bill should go further and 'require the ACMA to publish information on measures taken by digital communications platforms in response to misinformation codes'.<sup>20</sup>

5.26 Similar views were expressed by the Tasmanian Climate Collective recommending that the bill be amended 'by removing provisions for industry

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<sup>15</sup> Digital Industry Group (DIGI), *Submission 79*, p. 3.

<sup>16</sup> Australian Broadcasting Corporation, *Submission 37*, p. 5.

<sup>17</sup> *Explanatory Memorandum*, p. 24.

<sup>18</sup> DITRDCA, *Submission 74*, p. 7.

<sup>19</sup> Reset Tech Australia, *Submission 25*, p. 9.

<sup>20</sup> Australian Communications Consumer Action Network, *Submission 77*, p. 1.

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self-regulation and empower independent regulatory bodies with the authority to establish new standards'.<sup>21</sup>

### **Concern about the scope of ACMA's code and misinformation standard powers**

5.27 In contrast to these views, other submitters argued for greater constraints on the ACMA's proposed approval powers for industry codes and standards.

5.28 For example, DIGI recommended that 'additional minimum guardrails' should be 'set around the exercise of the power to request codes'. According to DIGI, the ACMA should only be able to request industry codes for 'those sections which are at a high risk of dissemination of mis and disinformation and which are not voluntarily implementing adequate measures to protect the community'.<sup>22</sup>

5.29 Similarly, Snap Inc. emphasised the need for the ACMA to consider the measures taken by digital platform service providers to comply with existing regulatory codes 'before requesting the development of new codes for misinformation and disinformation'.<sup>23</sup>

5.30 Google contended that there should be better guardrails and transparency around the ACMA's proposed powers to request and register codes and implement standards. These include requiring the ACMA to publish:

- the basis for any decision to request a code, accept or reject a variation of a code;
- the grounds for refusing to approve a code;
- the grounds on which the ACMA has determined that a code is deficient or totally deficient; and
- the grounds for determining a standard and varying a standard.<sup>24</sup>

5.31 Calls for greater transparency about the ACMA's decision-making is set out further in this chapter.

5.32 A range of other views were expressed about these proposed powers. These included:

- limiting the scope of the ACMA's proposed codes and standard making powers to disinformation as it is more objectively defined, than misinformation;<sup>25</sup>

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<sup>21</sup> Tasmanian Climate Collective, *Submission 92*, p. 3.

<sup>22</sup> DIGI, *Submission 79*, pp. 27–28.

<sup>23</sup> Snap Inc., *Submission 63*, p. 2.

<sup>24</sup> Google, *Submission 86*, p. 16.

<sup>25</sup> See, for example, DIGI, *Submission 79*, pp. 8–9; Google, *Submission 86*, p. 9.

- better defining the 'exceptional circumstances' in which a standard is made and including a sunset clause;<sup>26</sup>
  - lengthening the timeframe for industry to develop a code, and for the ACMA to assess whether a misinformation code has failed;<sup>27</sup> and
  - expanding the examples of matters that may be dealt with in a code or standard to include consumer harms or the undermining of consumer trust in the digital economy.<sup>28</sup>
- 5.33 The ACMA outlined certain practical considerations that may lead it to request a misinformation code. These include:
- that the voluntary code does not include participation from platforms that have large Australian user bases or does not include effective reporting or governance arrangements;
  - data that platforms publish under the bill, including the outcomes of risk assessments, may point to deficiencies that may require measures to be put in place;
  - complaints data published under the digital platform rules indicates that concerns about misinformation or disinformation are not being addressed;
  - independent and the ACMA commissioned research, that points to ongoing community concern about misinformation or disinformation on digital platforms; and
  - records kept and reported on including increasing volume of content violating platforms' policies.<sup>29</sup>

### **Enforcement mechanisms including penalty provisions**

- 5.34 As set out in Chapter 2, the bill proposes that the ACMA would take a graduated and proportionate approach to enforcement with a range of tools to address non-compliance by digital platforms. These include the use of formal warnings, remedial directions, infringement notices, injunctions and civil penalties.
- 5.35 This approach is consistent with the ACMA's broader compliance and enforcement approach across its broadcasting, radiocommunications, telecommunications and certain online content remit.<sup>30</sup>

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<sup>26</sup> DIGI, *Submission 79*, p. 3.

<sup>27</sup> DIGI, *Submission 79*, p 35. DIGI notes that the timeframe of 120 days for the making of a code is insufficient to 'allow for meaningful engagement with industry, the regulator, and other stakeholders'.

<sup>28</sup> Australian Communications Consumer Action Network, *Submission 77*, p. 4.

<sup>29</sup> ACMA, written questions on notice from Senator Grogan, written questions on notice from Senator Grogan, 12 November (received 14 November 2024).

<sup>30</sup> ACMA, [Compliance and enforcement policy](#) (accessed 12 November 2024).

5.36 The UTS Centre for Media Transition expressed broad support for the bill's proposed enforcement regime stating:

Overall, we think the enforcement regime under the bill is well-designed and improves on other parts of the Broadcasting Services Act in offering ACMA a more extensive range of enforcement options.<sup>31</sup>

5.37 While there was support for mechanisms to hold digital platforms accountable, various submitters highlighted the need to ensure proportionality, transparency and appropriate safeguards.

### **Concern that the penalty provisions are excessive**

5.38 Several submitters expressed concerns about the severity of potential penalties, with some arguing that these penalties would encourage digital platforms to 'over-enforce' and over-censor and disproportionately impact smaller platforms.

5.39 The need for a proportionate approach to penalties was raised by some submitters. For example, Google advocated that penalties should be available only where there has been a serious breach of a key requirement of the bill, and 'should be proportionate to the nature of the relevant conduct'. Google expressed concern that some requirements, such as obligations to publish certain information like a media literacy plan, are captured by the civil penalty provisions.<sup>32</sup>

5.40 DIGI recommended that the proposed penalties should be comparable to those in the *Broadcasting Act 1992*, including for breaches of broadcast codes and standards.<sup>33</sup>

### **Whether criminal penalties would apply**

5.41 Concerns were also expressed during the inquiry about the possibility of criminal penalties applying to contraventions of the bill. However, DIGI noted the removal of criminal penalties from the 2023 Exposure Draft of the bill.<sup>34</sup>

5.42 DITRDCA also confirmed that there are no criminal penalties in the bill.<sup>35</sup>

It further clarified, in relation to criminal proceedings against individuals:

There are no circumstances in this bill where an individual could be the subject of [criminal] proceedings in relation to this. Again, the bill is focused on digital platforms and the commitments they make under the codes they submit to ACMA. It is not about the people that post information to those

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<sup>31</sup> UTS Centre for Media Transition, *Submission 98*, p. 6.

<sup>32</sup> Google, *Submission 86*, p. 20.

<sup>33</sup> DIGI, *Submission 79*, p. 38.

<sup>34</sup> DIGI, *Submission 79*, p. 38.

<sup>35</sup> DITRDCA, *Submission 74*, p. 11.

platforms; it's focused on the platforms ... There are circumstances in the bill where individuals with knowledge of the platforms' compliance with the codes, such as employees of the platforms, might be asked to provide information to assist ACMA, but there are no circumstances in this bill at all where individuals would be the subject of such [criminal] proceedings.<sup>36</sup>

### **Transparency of the ACMA's decision making**

5.43 The transparency of the ACMA's decision making under the bill's provisions was also highlighted during the inquiry. This included various calls for greater clarity about the ACMA's decision-making.

5.44 For example, the Australian Muslim Advocacy Network Foundation emphasised the importance of transparency of both digital communications platform providers and the Government recommending that the ACMA 'publish information about actions they take that that impact human rights'.<sup>37</sup>

5.45 Digital Rights Watch suggested that greater transparency for reporting by ACMA would be welcome, in particular, reporting on platforms' decision making around content amplification.<sup>38</sup>

5.46 DITRDCA highlighted the range of transparency and accountability measures which would apply to the ACMA under the bill, including:

- certain regulatory actions by the ACMA, such as the making of digital platform rules, approval of codes or the determination of standards, are all disallowable legislative instruments subject to Parliamentary scrutiny;
- reporting on the ACMA's regulatory actions, including its decision-making, as part of the review of the operation of the bill; and
- a requirement for the ACMA to publish on its website an annual report on the operation of its powers under the bill.<sup>39</sup>

5.47 The ACMA welcomed transparency and accountability measures for its decision making powers as proposed in the bill, including:

- The ACMA's powers to develop digital platform rules, approve codes or make standards under the bill are all subject to parliamentary scrutiny and disallowance.
- Clause 69 of the bill requires the ACMA to give an annual report on the exercise of its powers under the bill to the Minister. This report would

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<sup>36</sup> Mr James Chisholm, Deputy Secretary, Communications and Media Group, DITRDCA, *Committee Hansard*, 11 October 2024, p. 60.

<sup>37</sup> Australian Muslim Advocacy Network Foundation, *Submission 29*, p. 3.

<sup>38</sup> Ms Elizabeth (Lizzie) O'Shea, Founder and Chair, Digital Rights Watch, *Committee Hansard*, 11 October 2024, p. 34.

<sup>39</sup> DITRDCA, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024).

provide details on the use of the ACMA's powers during the financial year, and comment on whether misinformation codes or standards are necessary. The Minister must present the report to the Parliament and the ACMA must also cause a copy of this report to be published on its website.

- Clause 70 of the bill requires that triennial reviews will be conducted on the operation of the bill.<sup>40</sup>

5.48 These are in addition to existing transparency and accountability mechanisms in place for the ACMA, including annual reports, a published compliance and enforcement policy, publishing a set of annual compliance priorities, publishing investigations, and ongoing parliamentary scrutiny.<sup>41</sup>

### **The ACMA's intended activities**

5.49 The ACMA outlined that it anticipated taking a number of immediate steps, if the bill were passed, to inform digital platforms and the public about its proposed powers and responsibilities. This would include:

- educating the public and platforms about its new powers, and the obligations placed on the ACMA in exercising them;
- publishing industry guidance about the providers and services captured by the legislation;
- communicating to platforms the impact of the legislation and its expectations for initial compliance with transparency obligations including on data access for researchers and related obligations under the Code;
- continue to work with industry to improve voluntary transparency reporting, including the adoption of pilot metrics to improve reporting under the Code; and
- use its information-gathering powers should voluntary efforts to improve transparency fail or prove inadequate.<sup>42</sup>

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<sup>40</sup> ACMA, written questions on notice from Senator Grogan, 22 October 2024 (received 1 November 2024).

<sup>41</sup> ACMA, written questions on notice from Senator Grogan, 22 October 2024 (received 1 November 2024).

<sup>42</sup> ACMA, written questions on notice from Senator Grogan, 12 November 2024 (received 13 November 2024).



## Chapter 6

### Committee view and recommendations

- 6.1 The committee acknowledges the significant public interest and community concerns regarding the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 (the bill).
- 6.2 The inquiry heard a wide range of perspectives and views about the bill's potential impact and effectiveness, including concerns about its impact on freedom of expression.
- 6.3 The committee thanks all individuals and organisations who commented on aspects of the bill, and on broader principles related to digital platforms and the role of government in regulating online content.
- 6.4 The committee is aware of a significant amount of online commentary throughout the inquiry about the bill's purpose and its provisions, and concerns about the risk of its misuse.
- 6.5 The committee acknowledges that the timeframe for the inquiry was very tight and provided extensions on request for individuals and groups to make submissions and continued to accept submissions throughout the inquiry.
- 6.6 The bill's development included extensive public consultation undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and Arts as well as on an Exposure Draft of the bill in 2023.
- 6.7 A range of amendments were passed by the House of Representatives during this inquiry which took into account the concerns raised about the bill's scope, the need to improve access to data, and for greater accountability of the Australian Communications and Media Authority (ACMA). The committee considers that that these amendments have improved the bill.

#### **Greater transparency in the ACMA's decision-making processes**

- 6.8 The committee heard concerns about the scope of the ACMA's proposed role under this bill, including the need for greater transparency of the ACMA's decision-making, particularly with respect to its code and standards-making powers that can have a significant impact on digital platforms and end users.
- 6.9 While the committee acknowledges that the ACMA will have measures in place to communicate its expectations on compliance, there is scope for the ACMA to provide greater certainty about the practical considerations it will take into account in its decision-making and the criteria for evaluating whether a code or standard is necessary.

### **A national approach to digital literacy**

- 6.10 There was broad support for greater efforts to improve digital literacy, including resources to help end-users to identify reliable and authoritative information sources, and to critically evaluate information they consume online.
- 6.11 While the bill places responsibilities on digital platforms to implement and publish media literacy plans, the committee considers it would be valuable for a nationally consistent and supported approach to digital and media literacy with involvement from government, research and educational groups and media literacy experts, with input from media including local and independent news and the digital platform industry.
- 6.12 This could draw on and be informed by work of other regulators, including the Office of the eSafety Commissioner, as well as from other jurisdictions.

### **Professional news content and addressing misinformation and disinformation**

- 6.13 The committee heard diverse views about whether professional news content should be excluded from the bill.
- 6.14 On the one hand, some submitters and witnesses argued that the exemption for professional news content would undermine the bill's effectiveness, and that existing regulatory codes applying to professional news content have been inadequate in addressing misinformation and disinformation.
- 6.15 Media organisations and their representatives, however, contended that existing codes of practice and editorial standards sufficiently address misinformation and disinformation, and suggested that the bill's focus should remain on digital communications platforms.
- 6.16 The committee is of the view that, on balance, while professional news organisations currently operate under established editorial standards and codes of practice, there remains scope to improve these frameworks.

### **Balancing freedom of expression with other human rights**

- 6.17 The committee recognises that there is significant community concern about the bill's potential impact on freedom of expression including in areas of legitimate public debate.
- 6.18 The committee acknowledges that there are strong concerns from some religious groups that the bill may restrict religious perspectives that challenge mainstream views. In addition, concerns have been raised in relation to whether the bill is compatible with Australia's obligations under the *International Covenant on Civil and Political Rights*, particularly freedom of expression.
- 6.19 The committee acknowledges the importance of ensuring that appropriate safeguards are in place to protect freedom of expression.

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- 6.20 However, the right to freedom of expression is not absolute and needs to be balanced with other human rights. These include protecting the right of Australians to security of the person, and the right to participate in public affairs, and to vote and to be protected against discrimination.
- 6.21 In this regard, the bill places obligations on digital communication platforms to take more responsibility for the content they host and improve their transparency, while setting a high threshold for the content in scope of the bill.
- 6.22 In addition, the bill would require an independent triennial statutory review of its operation, including an assessment of the legislation's impact on freedom of expression.
- 6.23 While acknowledging the concerns raised about the potential impact of this bill, the committee considers that the bill strikes the right balance in enhancing the transparency and accountability of digital platforms, while not infringing on individuals' freedom of expression.
- 6.24 The bill would require digital platforms to have systems and processes in place for dealing with seriously harmful misinformation and disinformation on their services, empower the regulator to compel information and improve rules where necessary, as well as empower end-users with complaints procedures to challenge the content moderation decisions of platforms and measures to support media literacy.
- 6.25 The bill would also introduce enforceable rules that would go a long way to addressing the use of algorithms, bots, malicious deep fakes and advertising associated with the monetisation and spread of seriously harmful misinformation and disinformation online.
- 6.26 Therefore, the bill would go a long way to preventing and responding to seriously harmful misinformation and disinformation to minimise its spread online. The committee considers that, in view of the grave and serious threats posed by misinformation and disinformation, that doing something is better than doing nothing when it comes to keeping Australians safe online.
- 6.27 However, after years of consultation, discussion and negotiation to bring on legislation to regulate digital platforms, there is no pathway for this bill to pass through the Senate.

**Recommendation 1**

**6.28 The committee recommends that the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 be withdrawn and immediately discharged from the Notice Paper.**

**Senator Karen Grogan  
Chair**

## Senator Sharma's Additional Comments

- 1.1 The Committee's inquiry into Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill) has revealed it to be a dangerous, rushed and ill-advised piece of legislation.
- 1.2 It would have chilling and wide-ranging implications for fundamental human rights, the free exchange of ideas, and the ability of citizens to express viewpoints that challenge conventional wisdom or majority opinion.
- 1.3 The bill is without friends. The committee's report makes a valiant attempt to construct support for the legislation, but the truth is that almost no witnesses who appeared before the committee were prepared to speak in support of it. That is why the committee's report predominantly cites the Explanatory Memorandum and the Department as support for its positions.
- 1.4 Even where witnesses acknowledged that misinformation and disinformation posed a risk to society, they could not agree with the remedy proposed by the bill. It might cure the disease (that of misinformation and disinformation), but at the expense of killing the patient: a free and liberal society.
- 1.5 The process for conducting the inquiry left much to be desired, given the very truncated timeframes involved. Some 28,000 submissions were received, an overwhelming amount. Only a small fraction could be published in the time available. Only a small number of hearings were conducted. Many witnesses and experts were not heard.
- 1.6 The bill, if passed, would impose obligations on digital communications platforms to manage and remove misinformation and disinformation on their platforms. If they are assessed (by government) to be failing in this obligation, the regulator, the Australian Communications and Media Authority (ACMA), is able to step in and impose its own standards, and impose heavy fines.
- 1.7 Under the terms of the bill, and as detailed in the Explanatory Memorandum, the definition of misinformation includes 'opinions, claims, commentary and invective', that is 'reasonably verifiable as false, misleading or deceptive', by reference to 'expert opinion' and 'fact-checkers', and that may lead to 'serious harm'. The bill provides for some narrow exceptions.
- 1.8 These terms are exceptionally broad and ill-defined. This means that the scope of what may be characterised by digital communications platforms as misinformation and removed accordingly is even more so, given the very high fines they face (up to five per cent of global turnover, so running into several billion dollars) if they get this judgement wrong.
- 1.9 To avoid the risk of such fines, these platforms will err on the side of caution, and take down any information that can potentially fall within the broadest

interpretation of misinformation. Whatever incentive may exist to protect freedom of expression is more than outweighed by spectre of such heavy penalties.

- 1.10 The result, in practice, is that a modern-day Copernicus or Galileo would face a modern-day Inquisition. Someone who seeks to challenge received wisdom or orthodoxy, as Copernicus and Galileo did in their day, and publishes their views on a digital communications platform, would almost certainly find themselves being 'cancelled' by this platform.
- 1.11 The concerns expressed about the deleterious impact of this bill on the right to freedom of expression by, amongst others, the Australian Human Rights Commission, the Victorian Bar Association, the Parliamentary Joint Committee on Human Rights, the Senate Standing Committee for the Scrutiny of Bills, and Professor Anne Twomey, are too serious to ignore.
- 1.12 Of equal concern is the stifling effect this bill would have on the ability of our nation to advance.
- 1.13 Free and liberal societies such as ours have, since the Enlightenment, made progress through the open contest of ideas and opinions. Scientific breakthroughs can only come about because received wisdom can be challenged and contested openly. Society advances in its values by permitting challenges to the prevailing orthodoxy. Whether it is the rights afforded to minorities or the status of women, the social progress Australia has made would not have been possible without free and open debate and exchange of viewpoints. Given the ubiquity of digital communications platforms in the modern-day marketplace of ideas, this bill would suppress such a debate.
- 1.14 I note the committee's recommendation that the bill be withdrawn and discharged from the notice paper. This is welcome, but this Bill should never have been introduced, and no bill like it should be introduced again.

**Senator Dave Sharma**  
**Member**

# Nationals Senators' Additional Comments

## Introduction

- 1.1 The inquiry into the Labor Government's Misinformation and Disinformation Bill has demonstrated the proposed legislation compromises the free speech of Australians and is a threat to the free exchange of ideas and democracy.
- 1.2 The evidence presented throughout this inquiry showed that although the Hon Michelle Rowland MP, Minister for Communications (the Minister) was taking a second run at this legislation—after failing spectacularly a year earlier—the legislation proposed was again half-baked and poorly considered.
- 1.3 Witnesses such as Nine Entertainment were very clear that their primary position is that this bill should not be passed and that this bill is censorship.<sup>1</sup> Mrs Lorraine Finlay from the Australian Human Rights Commission recommended that the bill not be passed in its current form for reasons such as:

... the inherent dangers in allowing any one body – whether it be a government agency or social media platform – to make decisions about what is and what is not misinformation and disinformation without robust safeguards and accountability mechanisms.<sup>2</sup>
- 1.4 From the outset, the Labor Government treated this inquiry process as though the Misinformation Bill was a done deal, and treated the necessary consultation and scrutiny process for such a controversial piece of legislation with low regard. They limited the timeframe to accept submissions, attempted to restrict hearings to a single hearing, and to date only 105 of the more than 28 000 submissions are publicly available on the committee website.<sup>3</sup>
- 1.5 The Labor Government's core argument in defending this proposed legislation seemed to be that this bill relates to rules digital platforms must follow when dealing with information, rather than rules related to specific pieces of misinformation, and a lack of understanding as to why Australians are worried about it.<sup>4</sup> But Australians are worried. They are worried that this legislation will stifle free speech and result in censorship of legitimate viewpoints.
- 1.6 Throughout the inquiry, witnesses raised serious concerns and criticism of the definitions in the proposed bill and its Explanatory Memorandum, which were

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<sup>1</sup> Ms Larina Alick, Executive Counsel, Nine Entertainment, *Committee Hansard*, 11 October 2024, p. 8.

<sup>2</sup> Australian Human Rights Commission, Opening Statement (Tabled 17 October 2024), p. 2.

<sup>3</sup> See the committee's website at: Senate Environment and Communications Legislation Committee, [Submissions – Parliament of Australia](#).

<sup>4</sup> David Coleman, '[Labor's misinformation bill is a betrayal of democracy and has no place in Australia](#)', *Australian Financial Review*, 8 October 2024 (accessed 22 November 2024).

repeatedly described as too 'vague', 'broad', and 'subjective'. Strong concerns were raised from almost all witnesses, including lawyers, industry and everyday Australians. Mr Brian Marlow from CitizenGO warned the committee 'when you have definitions that are this loose, which I believe is deliberate, it allows unelected bureaucrats to enact their own personal biases and crack down on all forms of speech'.<sup>5</sup>

### **Submission process and inquiry timeline**

- 1.7 The Senate referred the provisions of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the bill) to the Environment and Communications Legislation Committee on 19 September 2024, for report by 25 November 2024. Submissions closed on 30 September 2024, with the submission process open for 7 business days. In that period, the committee was inundated with submissions, with more than 28 000 received.
- 1.8 Although many of the contributions submitted to the inquiry were proforma petition emails, more than 8 000 were received from individuals and due to the truncated and rushed process allowed by the Labor Government, Senators on the committee have been unable to view these publicly.
- 1.9 As at 22 November 2024, only 105 submissions out of more than 8 000 individual contributions have been published. On 11 November 2024—the final hearing date for this inquiry—only 98 had been published.
- 1.10 Senators' offices were overwhelmed by emails and telephone calls from stakeholders and individuals who were deeply concerned about the reckless inquiry approach applied to this proposed legislation and on 1 October 2024 the Nationals Senate team wrote to the committee requesting they consider the following:
  - extending the date to receive submissions;
  - holding a minimum of three—and preferably five—public hearings; and
  - extending the reporting date until at least December 2024, and preferably into 2025.
- 1.11 The Nationals Senate team raised concerns that lack of proper scrutiny and consideration would set a worrying precedent for governance, and is a disservice to the democratic fabric that underpins our nation.
- 1.12 The Australian Senate Practice handbook states:

One of the principal functions of the Senate ... is to conduct inquiries into such matters of public interest and into the conduct of government. Inquiries assist the Senate to obtain information which is necessary to enable it to legislate effectively and to inform the public of the manner in which

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<sup>5</sup> Mr Brian Marlow, Campaigner, CitizenGO, *Committee Hansard*, 11 November 2024, p. 23.

government is conducted so that the electors will also be capable of making informed decisions.

Inquiries are conducted principally by seeking information and opinions from persons who possess the information and whose views are likely to be significant. The formal method whereby this information-gathering is conducted is through hearings of evidence at which witnesses attend and provide information by making submissions and answering questions.<sup>6</sup>

- 1.13 The committee declined to extend the submission date and the date for the committee to provide a report, however it did agree to accept late submissions upon consideration, and provided the minimum three public hearings we requested.
- 1.14 Despite Nationals Senators' protestations, the more than 8 000 individual contributions have yet to be published. The Australian public has the right to participate in a fair and transparent consultation, not a rushed push to bypass scrutiny in pursuit of political gain. This has not occurred in this inquiry. Voices who raised concern or query over this rushed Labor Government legislation were gagged. The committee was unable to review and consider these submissions as part of the inquiry.
- 1.15 Nationals Senators acknowledge the hard work and dedication of the Environment and Communications secretariat staff and the long hours worked to support this inquiry. Nationals Senators are aware of the resource burden on the team during an inquiry of this magnitude and in such a short timeframe. The secretariat was at all times helpful, balanced, easily contactable and fair as they worked to support the committee.
- 1.16 Nationals Senators would like to thank the Environment and Communications secretariat for their work on this inquiry.

### **Definition uncertainty**

- 1.17 Throughout the inquiry, concerns were raised over the unclear and uncertain definitions of misinformation and disinformation in the proposed bill, including from Mr Mejia-Canales, who believed 'the bill could benefit from tightening up some of these definitions'.<sup>7</sup>
- 1.18 The inquiry raised concerns about interpretation of the definitions within the legislation and Explanatory Memorandum, as without clarity these definitions could be misinterpreted or incorrectly applied, which could result in the restriction of legitimate freedom of expression, or fail to address harmful behaviour not adequately prescribed.

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<sup>6</sup> Commonwealth of Australia, *Odger's Australian Senate Practice*, 14<sup>th</sup> edition, 2016, p. 547.

<sup>7</sup> Mr David Mejia-Canales, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 5.

1.19 Senator Ross Cadell questioned where the definition of 'politically motivated censorship' sat under the broader definitions, to which Mr Daniel Wild from the Institute of Public Affairs (IPA) responded it was 'pretty vague and subjective'.<sup>8</sup>

1.20 One of the IPA's main reservations is:

...that misinformation and disinformation themselves are very broad terms. So you look at the concept of harm, the potential to cause harm, to a range of factors, including the Australian economy and so forth. It's hard to think of any politically contested issue that could not be conceivably captured under these laws, and that's a real concern of ours.

As we know, in our society, people can take offence or claim that they've been harmed by something. They may genuinely mean that. They may genuinely feel harmed by someone's speech. But that is an incredibly low threshold by which to police what people can say online. We also know the prospect of activists, that will weaponise this to try and shut down debate, by claiming something has been harmed, and they use that to weaponise, which then has a chilling effect. People will say, 'I'm not going to engage anymore because I'm worried that I'm going to get censored under this regime'.<sup>9</sup>

1.21 The proposed legislation and its Explanatory Memorandum's lack of clear and precise definitions for misinformation and disinformation undermine the very purpose of the bill and the principles of freedom of expression and legal certainty.

1.22 The vague and overly broad definitions of 'misinformation' and 'disinformation' in the proposed bill pose a significant risk of overreach, potentially restricting lawful speech under the guise of addressing misinformation. The ambiguity of the proposed bill and its Explanatory Memorandum may result in individuals fearing to express legitimate opinions, or even to engage in open discourse due to fear of regulatory or legal repercussions. The IPA provided evidence that whilst people are concerned about the spread of misinformation, in polling they conducted, 49 per cent of respondents believed the solution to countering misinformation was more debate or more freedom of speech.<sup>10</sup>

1.23 Dr Duxbury of Digital Industry Group (DIGI) opined '[w]e think the definitions are too broad and, unfortunately, they put the digital platforms in the position of being the sole arbiters of truth online'.<sup>11</sup> The definitions provided in the legislation and explanatory memorandum are broad and vague. Clear and

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<sup>8</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 23.

<sup>9</sup> Mr Daniel Wild, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 23.

<sup>10</sup> Mr Daniel Wild, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 26.

<sup>11</sup> Dr Jennifer Duxbury, Director, Policy, Regulatory Affairs and Research, DIGI, *Committee Hansard*, 17 October 2024, p. 9.

concise definitions are fundamental to effective legislation as they determine the scope, application and interpretation of laws and ensure they are effective for their intended purpose.

- 1.24 The Australian Human Rights Commission warned that 'if we can't clearly define what the problem is, it is very difficult to come up with a legislative response that will strike the right balance in addressing that problem'.<sup>12</sup>
- 1.25 Further, Mrs Finlay provided evidence that inadequately defined terms could lead to censorship of human rights defenders exercising their rights 'to criticise the environmental or human rights policies of major companies in Australia'.<sup>13</sup> Public debate and open discourse on issues such as climate change, economic policy, or healthcare should be encouraged and not suffocated.
- 1.26 The bill in clause 13 defines misinformation as the 'dissemination of content using a digital service', where it 'contains information that is reasonably verifiable as false, misleading or deceptive'. The content also must be provided to one or more end users and is 'reasonably likely to cause or contribute to serious harm'.<sup>14</sup>
- 1.27 Information is not just limited to content that is said to be a 'fact', but also extends into the realm of 'opinions, claims, commentary or invective'.<sup>15</sup> This poses serious concerns that this bill could empower the Australian Communications and Media Authority (ACMA) to require digital platforms not only to censor misleading facts, but also to engage in deciding whether an individual's 'opinion' or 'commentary'—particularly on controversial political, economic or even academic topics—could fall foul of this bill.
- 1.28 As stated by Professor Anne Twomey, 'once you go beyond what's verifiably untrue to things like claims and opinions that are made [for example] during an election process...then you're right slap-bang into political communication, and that's where the thing will fall over'.<sup>16</sup> The far reach of this definition broadens the scope of the bill beyond a protection of the public from misleading facts but rather stifles potential public debate on important and controversial issues.<sup>17</sup>

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<sup>12</sup> Mrs Lorraine Finlay, Human Rights Commissioner, Australian Human Rights Commission, *Committee Hansard*, 17 October 2024, p. 35.

<sup>13</sup> Mrs Lorraine Finlay, Human Rights Commissioner, Australian Human Rights Commission, *Committee Hansard*, 17 October 2024, p. 39.

<sup>14</sup> *Explanatory Memorandum*, p. 25.

<sup>15</sup> *Explanatory Memorandum*, p. 25.

<sup>16</sup> Professor Anne Twomey AO, Private capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>17</sup> See, for example: Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, pp. 4–5; Mr David Mejia-Canales, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 5.

- 1.29 In distinguishing disinformation from misinformation, the bill also adds that for content to satisfy the disinformation requirement there must be an intent to deceive another person or that the dissemination of the content involved 'inauthentic behaviour'.<sup>18</sup>
- 1.30 From within the digital platform industry, concerns around the clarity and the breadth of the definitions for misinformation and disinformation have made the bill potentially unworkable. Google stressed that the bill lacked the 'requisite certainty', in order to 'meet obligations under the Bill in a way that minimises the risk of unintended consequences, notably the removal of content'.<sup>19</sup> The Digital Industry Group Inc. (DIGI) stated that the scope of the definitions remains 'too broad'.<sup>20</sup>
- 1.31 The Victorian Bar Inc. also expressed apprehension as the bill hinges on the concepts of 'misinformation' and 'disinformation' and these will 'inform the interpretation of every provision of the Bill'.<sup>21</sup> If the definitions of these two crucial concepts are impractical, then the bill itself would not translate to a functional piece of legislation.
- 1.32 Whether something is 'reasonably verifiable' as false, according to the Explanatory Memorandum, requires the ACMA or the digital platforms themselves to engage either in a process of fact-checking, contracting it out to third parties, or engaging 'expert opinion'.<sup>22</sup> The process of determining whether something is reasonably verifiable as false and could lead to the cause of 'serious harm' would result in a scrambled approach by digital platforms and the ACMA whenever there is an election, religious holiday, delayed major infrastructure project or controversial forecasts on the Australian financial markets.
- 1.33 The dangers of this scrambled and potentially unsustainable approach were articulated by Professor Twomey who observed that when engaging an 'expert opinion', often a fact checker who is not as well versed in the matter would 'misunderstand the experts',<sup>23</sup> which can result in inaccurate fact checking reports or indeed potentially unreasonable determinations of falsehood.
- 1.34 These concerns were further examined by the Australian National University (ANU) Law Reform and Social Justice Research Hub. In their submission they emphasised the difficulties of relying on experts to determine content to be 'reasonably verifiable' as false. They wrote that 'whilst experts are often correct

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<sup>18</sup> *Explanatory Memorandum*, p. 26.

<sup>19</sup> Google, *Submission 86*, p. 18.

<sup>20</sup> Digital Industry Group Inc., *Submission 79*, p. 2.

<sup>21</sup> The Victorian Bar Inc., *Submission 62*, p. 4.

<sup>22</sup> *Explanatory Memorandum*, p. 25.

<sup>23</sup> Professor Anne Twomey, Private capacity, *Committee Hansard*, 11 November 2024, pp. 6–7.

within their particular domain of expertise, they are sometimes wrong – especially when making determinations on issues whereby time has not allowed substantial research to be conducted'.<sup>24</sup>

- 1.35 Dr Nick Coatsworth, speaking from a public health perspective, discerned that it was 'simply not conceivable', for the ACMA, the Minister or government bodies to determine an 'uncontested' threshold for something being 'reasonably verifiable' as false in the area of public health.<sup>25</sup>
- 1.36 When discussing her YouTube channel, which provides public education about constitutional issues, Professor Twomey expressed concern that she doesn't know whether her content falls within the category of reasonable dissemination of academic material, stating 'well, if I don't know then maybe that is a problem'.<sup>26</sup>

### **Serious Harm**

- 1.37 The definitions of the bill required the inclusion of the element of 'serious harm' in order to satisfy whether content on a digital platform constitutes misinformation or disinformation. 'Serious harm' has been also considered too broad and vague by inquiry participants.<sup>27</sup> 'Serious harm' is defined through six elements; that is, that the content is reasonably likely to cause or contribute to:
- harm to the operation or integrity of an Australian electoral process
  - harm to public health in Australia
  - vilification of a group in Australian society distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin, or vilification of an individual because of a belief that the individual is a member of such a group
  - intentionally inflicted physical injury to an individual in Australia
  - imminent damage to critical infrastructure or disruption of emergency services in Australia
  - imminent harm to the Australian economy.<sup>28</sup>
- 1.38 It goes without saying that the categories set in this bill attach themselves to key areas of civic and political debates within Australia. This concern was highlighted by the IPA in their evidence to the inquiry when they stated 'the concept of harm, the potential to cause harm, to a range of factors, including the

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<sup>24</sup> ANU Law Reform and Social Justice Research Hub, *Submission 38*, p. 4.

<sup>25</sup> Dr Nicholas Coatsworth, *Submission 13*, [p. 2].

<sup>26</sup> Professor Anne Twomey, Private capacity, *Committee Hansard*, 11 November 2024, p. 9.

<sup>27</sup> See, for example: Google, *Submission 86*, p. 19.

<sup>28</sup> *Explanatory Memorandum*, p. 6.

Australian economy and so forth. It's hard to think of any politically contested issue that could not be conceivably captured under these laws'.<sup>29</sup>

- 1.39 A common example raised by the IPA and other submitters related to the discussion of interest rates, which could harm confidence in financial markets despite legitimate concerns of rising inflation and the cost of living. Discussion of these matters could be considered 'serious harm' under this bill.<sup>30</sup> The bill could also stifle content that also could question legitimate debate around corrupt trade practices or banking that could lead to potential inquiries in future.<sup>31</sup>
- 1.40 Regarding the economy, the DIGI in its written submission stated that harm to the Australian economy was 'highly speculative and not grounded in any evidence of harmful mis/disinformation that is not already covered by other laws.'<sup>32</sup> This further supports that certain elements of the bill target areas where controversial policy discussions or topical issues could be unduly censored by a subjective code or standard set by the ACMA.
- 1.41 Similarly, the Australian Christian Lobby highlighted '[t]he very definition of 'serious harm' is broad, vague, subjective and, really, limitless...'<sup>33</sup> This concept of subjectivity has also been an area of criticism.
- 1.42 One of the dangers of the broad scope of 'serious harm' is that under clause 13(3), to determine whether the content on a digital service is "reasonably likely" to cause or contribute to 'serious harm', 'regard must be had to':
- the circumstances in which the content is disseminated;
  - the subject matter of the information in the content that is reasonably verifiable as false, misleading or deceptive;
  - the potential reach and speed of dissemination;
  - the author of the information;
  - the purpose of the dissemination;
  - whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct;
  - other related information disseminated that is reasonably verifiable as false, misleading or deceptive;

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<sup>29</sup> Mr Daniel Wild, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 23.

<sup>30</sup> See, for example: Mr Daniel Wild, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 24; Mr James McComish, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 8; Australian Human Rights Commission, *Submission 66*, p. 5; Mr Matthew Byrne, Politics Lead, Media, Entertainment and Arts Alliance, *Committee Hansard*, 11 October 2024, p. 45.

<sup>31</sup> See, for example: ANU Law Reform and Social Justice Research Hub, *Submission 38*, p. 4.

<sup>32</sup> DIGI, *Submission 79*, p. 7.

<sup>33</sup> Mrs Michelle Pearse, Chief Executive Officer, Australian Christian Lobby, *Committee Hansard*, 17 October 2024, p. 20.

- any matter determined by the Minister under subclause; or
  - any other relevant matter.
- 1.43 The above criteria sets out a subjective scope in determining whether content could cause or contribute to 'serious harm.'

### **The term 'reasonably likely' and its effect**

- 1.44 The definitions contained in the proposed bill also included the term 'reasonably likely' which, it could be construed, indicates that no actual damage is required, rather that there is a likelihood that damage could result. This creates a broad prospective assessment that the courts will have to apply, which could have serious implications for freedom of expression.<sup>34</sup>
- 1.45 Furthermore, the concept of 'reasonably likely' in both clauses 13(3) and 14 creates a situation in which the bill as legislation would function on a series of subjective value judgements which is determined by the ACMA codes and standards, digital platforms or potentially even the Minister.
- 1.46 This concern was raised by the Victorian Bar who emphasised that these value judgements could be made 'in respect of favoured and disfavoured 'authors' or 'purposes', without any express obligation to have regard to freedom of expression, privacy, economic liberty or any other countervailing concerns'.<sup>35</sup>
- 1.47 At a public hearing, a representative of the Victorian Bar further highlighted that 'the power of censorship does indeed lie in the hands of platform operators, it's entirely possible for them wrongly to label, perhaps for an ideological reason'.<sup>36</sup>

## **CONFUSION AND INCONSISTENCY – the legislation and its Explanatory Memorandum**

- 1.48 Professor Twomey raised concern that there seemed 'to be a difference between what's actually said in the bill and what the EM says it's supposed to say, and this is where [she] finds it all very confusing'.<sup>37</sup>
- 1.49 The Explanatory Memorandum should sit alongside the legislation and serve as an interpretation device to clarify the intent and purpose of the legislation. It is essential to ensure the Explanatory Memorandum supports rather than confuses the interpretation of legislative provisions. The inconsistencies between the proposed legislation and its Explanatory Memorandum were raised by Professor Twomey:

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<sup>34</sup> ANU Law Reform and Social Justice Research, *Submission 38*, p. 9.

<sup>35</sup> Victorian Bar, *Submission 62*, p. 9.

<sup>36</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 6.

<sup>37</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 11.

The bill, for example, says that it's misleading if it's 'reasonably verifiable' as false and misleading. A normal human being would think, 'Okay, is that something that you can actually prove is a matter that's true or false?' For example, take an advertisement that uses a celebrity's face—Twiggy Forrest or someone—and says, 'I'm supporting this, and here's my business.' It's a scam. It's false, okay? Things like that that you can just prove are false—fine. But then, if you look at what it says in the EM, it says, 'No, we're not just dealing with facts here; we are dealing with opinions and commentary and claims and invective.' And you think: 'Well, you can't prove those things are false. You can't prove that someone's opinion is false; it's an opinion.'

Then it goes on in the EM, and it says: 'How do you do that? Oh, you get a fact checker to decide.'<sup>38</sup>

- 1.50 If the bill is passed, the inconsistencies and ambiguities in the proposed legislation and its Explanatory Memorandum diminish its ability to serve as a reliable resource to aid Courts and stakeholders when interpreting, understanding and applying the law. Inconsistent guidance may lead to misinterpretations, non-compliance, inadvertent violations and challenges.
- 1.51 This rushed attempt by Labor to tick off an election commitment in the final throes of the Parliamentary term with confusing and inconsistent legislation may have long lasting consequences and legal uncertainty.

### **PROPORTIONALITY – Opinions, claims, commentary and invective**

- 1.52 The Victorian Bar has expressed significant concerns about the proportionality of the bill in the context of human rights. In both domestic and international human rights law, the principles of proportionality mandates that any restriction on fundamental rights must be necessary, suitable, and the least restrictive means to achieve a legitimate aim (Article 19 of the ICCPR). They assert that the bill and its Explanatory Memorandum imposes restrictions that exceed what is reasonable and necessary whilst attempting to address the legitimate concern of dissemination of misinformation and disinformation.
- 1.53 The broad definitions of misinformation and disinformation in the bill raise proportionality concerns and the inclusion of vague terms such as 'serious harm' without precise definitions and clarity creates a risk of overregulation. Mr McComish stated: '[t]his most peculiar insertion in the explanatory memorandum, which is an extraordinary document, that 'opinions, claims, commentary and invective' can constitute misinformation is one of the most disturbing aspects of this bill for the Victorian Bar'.<sup>39</sup>
- 1.54 They also stated they were 'astonished' when they reviewed the Explanatory Memorandum and saw their concerns:

<sup>38</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>39</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 5.

[n]amely, that there was a grave danger to freedom of expression—had been flipped on its head explicitly in the Explanatory Memorandum to encompass the very thing that we feared: that views, opinions, claims, invective and all the kinds of things that one sees on the internet that are not factual claims which are capable of verification are, according to the government's explanatory memorandum, encompassed in this bill.<sup>40</sup>

1.55 This further incongruence between the bill and its Explanatory Memorandum highlights the concerns that inconsistency and lack of clarity results in confusion and misinterpretation. Mr McComish called attention to the inconsistencies between the bill and its Explanatory Memorandum as he expressed: 'That inclusion of 'opinions' and 'claims' within the definition of misinformation—not according to the text of the bill, mind you, but according to the explanatory memorandum—is what gives us grave concern. That's where the language came from. Our concern about the overreach of the bill has taken on a new life, in a very disturbing way, in our view.'<sup>41</sup>

1.56 Senator Canavan questioned whether the proposed legislation potentially restricts the constitutional protection of freedom of discussion and if it meets a test of proportionality. Professor Twomey expressed concern that whilst the proposed bill does attempt to put in a proportionality test to address it, the terminology used differs from that of the High Court. Professor Twomey suggested this was more 'a minimal test'.<sup>42</sup>

1.57 The Human Rights Law Centre also raised concerns that:

'[f]reedom of expression can be restricted but, while being compliant with the International Covenant on Civil and Political Rights, the restriction has to be lawful in pursuit of a legitimate objective, proportionate to that objective and, for one of the grounds, permissible, including national security, public order, public safety, public health and of course the protection of the rights, freedoms and reputations of others...the law that seeks to restrict a freedom has to be of sufficient precision to be able to know what is in and what is out—what conduct is and isn't allowed.'<sup>43</sup>

1.58 The bill and its Explanatory Memorandum fails to meet the standards of proportionality, particularly concerning freedom of expression.

1.59 The Parliamentary Joint Committee on Human Rights (the PJCHR) provided advice to Parliament in their report that the PJCHR reiterates its recommendations made in Report 9 of 2024 and further considers that 'there

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<sup>40</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 5.

<sup>41</sup> Mr James McComish, Member, Communications Legislation Amendment Working Group, Victorian Bar Inc, *Committee Hansard*, 11 November 2024, p. 5.

<sup>42</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>43</sup> Mr David Mejia-Canales, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 11 November 2024, p. 5.

appears to be insufficient remedies available with respect to breaches of human rights (including the right to freedom of expression and privacy), which raises questions as to whether there is an effective remedy.’

- 1.60 Human rights frameworks rely upon the existence of enforceable and meaningful remedies for violations. If remedies are insufficient or ineffective, the practical realisation of rights such as freedom of expression and privacy are merely hollow promises.

## **MEDIA LITERACY**

- 1.61 This proposed bill and the Explanatory Memorandum removes all responsibility from the user and governmental responsibility of the education of its citizens and places the onus of media literacy on social media platforms.
- 1.62 The members of DIGI through the voluntary code of conduct have already started to engage in media literacy plans, in order to better equip users to identify misinformation.
- 1.63 Australians don’t need [to be told] how to think and what to believe by governments and bureaucrats. Sometimes people say things that we might not agree with – and that's okay. That's how we progress through proper debate. The notion that government and bureaucrats are going to get in the middle of that is just utterly wrong.<sup>44</sup>

## **EXEMPTIONS / EXCLUSIONS – Two tier system**

- 1.64 The proposed bill excludes several entities from its scope, including professional media organisations and academia. The exemptions in the bill create what seems to be a two-tiered system that may exempt powerful entities while disproportionately regulating individuals and smaller and new organisations. There are concerns the bill could foster institutional elitism and diminish the integrity of public discourse.
- 1.65 The IPA raised concerns this provides the professional news organisations with unfair protections – protections that are not afforded to citizen journalists:

Senator CADELL: Given the exclusions from this bill of government and big media, is this an elitist censorship? Is this in favour of the big guy? Once upon a time the earth was flat, the sun revolved around us and, if you didn't believe in Christianity, you were burned. Is this protecting a two-tier ability to comment in the world?

Mr Wild: Yes, that's right. It is a two-tiered elitist system where professional news organisations and academia are exempt. So firstly it's unfair. Secondly, if misinformation is considered to be a problem, why does the source of it matter? Why is it that, if a professional news organisation were to write something that is false and knowingly false, let's say, there are no

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<sup>44</sup> The Hon. David Coleman MP, Shadow Minister for Communications, Interview with Luke Grant, 2GB, 24 November 2024.

consequences, but, if a regular person wrote literally verbatim the same thing, they would be subject to censorship? It just doesn't make sense. If you're genuinely concerned about misinformation, why would there be any exemptions?<sup>45</sup>

## OVERPENALISING

1.66 Failure to appear before ACMA with regard to a misinformation or disinformation complaint to give evidence can per the s 202 of the *Broadcasting Service Act 1992* result in imprisonment for one year. These concerns were highlighted by the IPA as they could apply to a small content creator on YouTube who may have been flagged for misinformation or disinformation.

1.67 The IPA clarified that while the bill doesn't allow investigation into individual posts or individuals there is the potential for individuals to face jail time as a result of failing to comply with a broader inquiry:

The point I understand that you are making is that section 68 of the bill provides that the investigation is not to relate to particular content posted by a single end user. That is easily circumvented by an investigation about a category of content or a type of content or the manner of content being published. As a part of that investigation, ACMA would be entitled under the provisions of the Broadcasting Services Act to give notice to persons in order to aid in their investigation.<sup>46</sup>

1.68 In response to a Question Taken on Notice, the Community Broadcasting Association of Australia said that if a broadcaster was to breach their code there would be remedial action taken prior to a licence cancellation or civil action being taken.

1.69 The penalties associated with breach of the code is substantially higher than that of the *Broadcasting Service Act 1992* and DIGI's submission raises concerns that these penalty amounts aren't in line with other legislation, which when turnover based penalties are only to revenue attributable to Australia, not global revenue.

1.70 While the fine is a sufficient incentive to ensure that social media companies comply with the code, there is potential that it's too strong an incentive and has the likely impact of social media companies implementing a better safe than sorry approach and removing more information than they are required to remove to ensure that they don't accidentally breach the code.

## DISINFORMATION

1.71 The rapid rise of technology and information sharing, especially in the digital age, has resulted in cases of dissemination of misinformation and

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<sup>45</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 24.

<sup>46</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 24.

disinformation, and contending with this may require targeted legislative mechanisms. It is essential to note the distinctions between misinformation and disinformation.

- 1.72 Disinformation involves the dissemination of deception and dishonesty with intent to deceive or harm.
- 1.73 The Labor Government's proposed bill and its Explanatory Memorandum fail to address the differing potential harms caused by misinformation and disinformation, instead they conflate the issues. The bill fails to provide the specificity and nuances required to consider digital platform dynamics, cross-border influences, and emerging technologies such as generative AI.
- 1.74 Misinformation and disinformation are fundamentally different due to the inauthentic nature of a disinformation campaign – they are bots. Concerns were raised whether it is possible under the international covenant, to assign human rights to a bot.<sup>47</sup> Mrs Taylor agreed stating ‘the distinguishing feature between disinformation and misinformation being inauthentic behaviour—I’m not sure that that was clear from the drafting of the bill.’<sup>48</sup>
- 1.75 Miss Dawkins of Reset Tech Australia provided evidence that ‘there are certainly more prescriptions that you could encourage with respect to inauthentic activity’.<sup>49</sup> Professor Twomey stated ‘I think there is a distinction, particularly in relation to the inauthentic behaviour, because I think that's more easily identifiable, and it's less contestable’.<sup>50</sup>
- 1.76 Concerns were raised however regarding the proposed bill's unclear definition of disinformation and whether we can apply human rights tests to inauthentic bots.<sup>51</sup>
- 1.77 These bots are often deployed to spread disinformation using automated accounts and algorithms, are designed to mimic genuine human interaction and operate at an inhuman scale and speed. Regulating these inauthentic entities requires the navigation of complex human rights tests, particularly when applying proportionality tests to an international standards.
- 1.78 Bots and inauthentic entities lack moral responsibility, agency or rights, however they are linked to human accountability by the individuals or entities who utilise them. AI-driven detection methods, though essential, raise concerns

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<sup>47</sup> See, for example, *Committee Hansard*, 17 October 2024, p. 24.

<sup>48</sup> Mrs Elisabeth Taylor, Independent Researcher, Australian Christian Lobby, *Committee Hansard*, 17 October 2024, p. 25.

<sup>49</sup> Miss Alice Dawkins, Executive Director, Reset Tech Australia, *Committee Hansard*, 11 October 2024, p. 17.

<sup>50</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 1.

<sup>51</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 1.

about algorithmic bias and overreach. Regulatory frameworks must ensure that automated systems meet transparency and accountability standards.

## Recommendation 1

### 1.79 Nationals Senators reiterate the Senate Select Committee on Foreign Interference through Social Media inquiry's report recommendations.<sup>52</sup>

## PUBLIC INTEREST JOURNALISM

1.80 While the bill provides protections for public interest journalism, witnesses raised concerns that while journalists are protected if they're writing for a masthead the protections may not extend to work done by freelance journalists posting on the covered platforms.

Senator CADELL: When you get down to it—and I'm trying to cover very specifically the line you're working here on public interest journalism and getting outside of professional journalism, and on freelancers and how they write their journalism—do you believe there are enough protections in the bill as it stands for public interest journalism where journalists aren't employed by a big masthead in the traditional way that defines media in Australia?

Ms Draffin: We were discussing that this morning, because we have noted, of course, that one of the key changes in the bill as it currently stands is that it's changed from news content produced by a news source to 'news content produced by a person', which, we appreciate, goes somewhat to the concerns around bots that were canvassed earlier. PIJI's [Public Interest Journalism Initiative] research has focused on mapping and indexing professional news outlets that produce public interest journalism. I really will have to restrict my comments to that, which has been the area around our inquiry. But I will note that there is currently no public register of journalists, which makes it more difficult in the sense of having a publicly available source. We also do note that the bill is still proposing to ensure that a journalist is subject to professional rules, such as those listed in the bill, and has editorial independence, which is key. But, again, I return to your earlier comment about ensuring that there are professional rules, include external complaints authorities.<sup>53</sup>

1.81 The bill doesn't provide clear guidance as to what constitutes a journalist, this could result in genuine public interest journalism that's not covered by a masthead being captured by the bill, this was a concern of the Media, Entertainment and Arts Alliance (MEAA) who said that the government would need to clarify that they would be covered by the exemption, even though it does appear to intend to be covered:

<sup>52</sup> Senate Select Committee on Foreign Interference through Social Media, *Select Committee on Foreign Interference through Social Media*, August 2023, pp. xv–xviii.

<sup>53</sup> Ms Anna Draffin, Chief Executive Officer, Public Interest Journalism Initiative, *Committee Hansard*, 17 October 2024, p. 66.

Senator CADELL: A member of yours—and I have a strong belief if not certainty that they are—has expressed some concern that if their publication puts out a story that they have written as a big media company they have an automatic exemption on this on social media as the legislation stands, but if they were to repost the same story themselves they may not be covered in the same way. The exemption goes out for the media companies themselves but not individual members and/or journalists. Is that your understanding currently?

Ms Percy: I don't have that kind of specific depth. What I would say is that there is an important delineation in terms of how our members are operating more generally. It is different because we have so many freelancers. One of the reasons that we advocate so much for our freelancers is that they're in the same kind of boat. It's really about journalism as much as the person who's doing it. But I don't know the specifics of that in the legislation. I might defer to Matt, who might, but it is important to understand that there should be protections for journalism, not just the media organisations, and that's partly what we advocate as a matter of course.<sup>54</sup>

Mr Byrne: That's right. I think that, if they are producing public-interest journalism, they should be covered by the legislation. It does seem that the intent of the legislation is to be as broad as possible and to cover a journalist who does that act, as you describe, Senator. However, I think that's a question that the government would have to answer. We would be as interested as you are in obtaining an explanation on that.<sup>55</sup>

## RELIGIOUS FREEDOM

1.82 Evidence from submissions and witnesses demonstrate strong concerns about the extent of the supposed protections for religious expression in the bill. Many religious organisations gave evidence for their concern about the ability of a social media company, the Australian Government through the ACMA, or ultimately a court to decide what is 'reasonable dissemination of content for a religious purpose.'

### Religious Purpose

1.83 The Explanatory Memorandum's only example of dissemination that 'might' be considered for a religious purpose is 'a post by a religious leader, promoting or explaining religious practices or doctrine'. The Australian Jewish Association (AJA) rightly raises concerns about whether this supposed protection extends to a religious based community organisation such as theirs.

1.84 Dr David Adler, on behalf of AJA, gave evidence that social media companies clearly did not have the expertise to be able to make an assessment of a 'religious purpose' in relation to Judaism. He went on to say:

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<sup>54</sup> Ms Karen Percy, Media Section President, Media Entertainment and Arts Alliance (MEAA), *Committee Hansard*, 11 October 2024, p. 42.

<sup>55</sup> Mr Matthew Byrne, Politics Lead, MEAA, *Committee Hansard*, 11 October 2024, p. 42.

There are exemptions for mainstream media, but there is no exemption for a community organisation that represents a religious community such as the Australian Jewish Association. For example, every Friday afternoon we publish a message on religious teaching in the lead up to Shabbat. Anyone that's interested can go on our Facebook page and scroll any Friday afternoon and they'll see examples of that. Often, we try to make the message related to current events. It is eminently possible—in fact, likely—that there could be people who take exception to our Shabbat message, for example, and that they make complaints. We do not think it's the role of social media companies to assess whether the AJA [Australian Jewish Association] Shabbat message is reasonable or not. We believe that it always is, and if someone disagrees they're free to say so. It affects us very directly.<sup>56</sup>

- 1.85 These same concerns extend to any individual adherent to a faith who might seek to post their religious views to social media.

### **Reasonable Dissemination**

- 1.86 These issues arise before it is even considered whether the sharing of a religious belief is 'reasonable dissemination' within the meaning of the bill, and the existing legal principles. Ultimately, whatever the legal principle, it will fall to social media companies in the first instance to determine what is 'reasonable dissemination'.

- 1.87 The Combined Faith Leaders noted that 'digital providers will be assessing whether the content of a religious belief is reasonable in determining whether or not it is misinformation. This is the same as saying that providers are empowered to determine whether the teaching is reasonable in itself.' They went on to say '[t]his 'reasonableness' test is highly inappropriate to be applied to religious speech'.<sup>57</sup>

- 1.88 In addition to the Combined Faith Leaders (representing 17 religious organisations), similar views were expressed by the AJA, the Australian Catholic Bishops Conference and other witnesses and submissions.

### **Interpretation of religious beliefs**

- 1.89 Both tests, for 'reasonableness' and 'religious purpose', ultimately raise the prospect of over censorship by social media companies. As Christian Schools Australia noted in their submission 'Social media companies are incentivised to broadly interpret the definition of 'misinformation', and narrowly interpret content that is reasonably disseminated for a religious purpose.'<sup>58</sup>

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<sup>56</sup> Dr David Adler, President, Australian Jewish Association, *Committee Hansard*, 11 November 2024, p. 11.

<sup>57</sup> Combined Faith Leaders, *Submission 70*, p. 6.

<sup>58</sup> Christian Schools Australia, *Submission 89*, p. 3.

- 1.90 In their submission, the Australian Catholic Bishops Conference raise the disturbing prospect that it will ultimately fall to a court to decide what is 'reasonable' and for a 'religious purpose'. They wrote that the bill '[l]eaves open to a judicial authority to decide what is and is not 'reasonable' when it comes to expressing a religious belief, and whether the expression of a religious belief is always for a 'religious purpose'.<sup>59</sup>
- 1.91 As the Australian Catholic Bishops Conference has stated in numerous submissions on other items of legislation, it is suboptimal to have courts and tribunals adjudicate on the reasonableness of religious expression.
- 1.92 The attempts in the bill to protect expression of religious belief fail on their face. In no circumstance is it proper for a social media company, the Government through the ACMA, or ultimately a court, to decide what is being disseminated for a 'religious purpose', and whether that dissemination is 'reasonable'. It is fundamental that the religious freedoms of Australians are upheld. The evidence before the committee is that this bill presents real and immediate risks to that freedom if it were to pass.

## **IMPLIED RIGHT TO POLITICAL COMMUNICATION & RIGHTS UNDER THE ICCPR**

- 1.93 The High Court has found that there exists in the Australian Constitution an implied right to political communication. It ought to go without saying that no Act of the Australian Parliament can extinguish that right.
- 1.94 The High Court has ruled that the freedom of communication protected by the constitution is not absolute and does not invalidate laws 'enacted to satisfy some other legitimate end if the law satisfies two conditions. The first condition is that the object of the law is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government or the procedure for submitting a proposed amendment to the Constitution to the informed decision of the people which the Constitution prescribes. The second is that the law is reasonably appropriate and adapted to achieving that legitimate object or end.'
- 1.95 In evidence to the Committee, Professor Anne Twomey, a professor of constitutional law, identified some key problems with how the bill and the accompanying Explanatory Memorandum sought to manage the implied right in line with the High Court's rulings. In her evidence, Professor. Twomey said:
- [t]here are bits in the bill where they attempt to put in a proportionality test to address [the constitutional protection for the freedom of political discussion] that. They pop up in a few places, but, curiously, they don't use the same wording that the High Court does. So it's a more minimal test. For example, ACMA can't approve a code unless it's satisfied that it's reasonably

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<sup>59</sup> Australian Catholic Bishops Conference, *Submission 40*, p. 4.

necessary et cetera. They don't use the exact words, so that's going to be a problem in itself.<sup>60</sup>

1.96 Professor Twomey also noted that there is a difference between the text of the bill and the Explanatory Memorandum. She notes that the Explanatory Memorandum in explaining the bill's definitions of misinformation and disinformation, extends beyond dealing with facts, to dealing with opinion, commentary, claims and invective. Representatives from the Victorian Bar also expressed concern about the inclusion of 'opinions, claims, commentary and invective' in the intended scope of 'information' for the purpose of the bill.

1.97 In summarising these concerns, Professor Twomey said:

The problem for me is that when I read the bill I thought, 'Oh, it's okay,' because it's referring to things that are verifiably false, and it's only dealing with it if you're mucking up the electoral processes, not the political content. But, when I read the explanatory memorandum, I'm seeing something completely different. That confusion, for me, is where potentially the constitutional problem comes in.<sup>61</sup>

1.98 This ultimately raises the question of what problem the Government is seeking to fix in relation to political communication. The bill lists harm to the operation or integrity of elections or referendums within its meaning of serious harm and seeks to rely on the bill to ensure the rights contained in Article 25 of the *International Covenant on Civil and Political Rights*, to which we are a signatory.

1.99 However, in their evidence before the Committee, the Australian Electoral Commission (AEC) stated:

I would point out that we are already doing pretty good work in dealing with mis- and disinformation about the Australian electoral process. We've got a reputation management system, which helps guide us. What we spoke about before with our disinformation register is part of that, as well as our work with the social media companies.<sup>62</sup>

1.100 If the AEC is able to effectively manage the spread of misinformation and disinformation using existing mechanisms, what is the purpose of this bill? If the AEC say they are able to work with the social media companies to manage misinformation and disinformation regarding the electoral process, does this bill not simply unduly burden the implied right by placing responsibility on a social media company to determine not only what facts, but also what opinions, claims, commentary and invective are 'verifiably false' in the context of elections and campaigns.

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<sup>60</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>61</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 4.

<sup>62</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 17 October 2024, p. 28.

1.101 Digital Industry Group Inc. (DIGI) further highlighted this problem by noting the disparity in how social media companies would be obliged to treat so called 'misinformation' in electoral and campaign material under this bill's regime, versus how traditional media treats the same and similar material. In their evidence, DIGI said:

... [a]t the moment, the way that the bill is crafted does put sole responsibility on [social media] platforms for making judgements about the accuracy of those materials, whereas traditional media is able to distribute materials that are false and misleading and political parties are free to create those sorts of materials. I feel that there's an asymmetry there that is not going to be helpful in combating threats to electoral processes.<sup>63</sup>

1.102 It is entirely reasonable for Australians, many who made contributions to the inquiry (most as yet unpublished), to be concerned about how their legitimate online political communication in the form of facts, opinions, claims, commentary and invective might be captured by the Government's misinformation and disinformation regime. It is equally concerning that social media companies are being deputised by the Government to make judgements about whether an Australian's political communication, protected by the Constitution, is in fact 'misinformation' or 'disinformation'.

## CENSORSHIP

### **Censor first, ask questions later**

1.103 Serious community concerns that this bill would result in government censorship in ideas were raised throughout the inquiry.

1.104 Ms Alick from Nine Entertainment stated:

I can't speak for all the broadcasters, but I certainly understand that our primary position is that this bill should not be passed. Our primary position is that this bill is censorship.

1.105 While defenders of the bill say that all it is doing is setting up a standard and code for social media, witnesses stated that it was the government offloading the censorship responsibilities off to the social media companies with Mr McComish stating:

However, one of our concerns is precisely that, because the power of censorship does indeed lie in the hands of platform operators, it's entirely possible for them wrongly to label, perhaps for an ideological reason, content as being misinformation and disinformation, therefore de-incentivising it all the like. Therefore it occurred to us that, insofar as the bill, quite rightly, aims to increase transparency in things of that sort, one thing it doesn't do is provide any obvious redress for people whose content is wrongly labelled as being misinformation.

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<sup>63</sup> Dr Jennifer Duxbury, Director, Policy, Regulatory Affairs and Research, DIGI, *Committee Hansard*, 17 October 2024, p. 11.

1.106 Professor Twomey echoed these same sentiments:

I don't trust the platforms either in relation to this, for obvious reasons. One of the points of this legislation is to try and get codes so that we've got some kind of a basis, some guidelines and rules, around what they do. From that point of view, the bill is actually supposed to be improving the current process. If it can improve transparency and if it can put sensible codes and guidelines around what they do, then that's better than what happens at the moment. But the reality is that these are their platforms. They're outside Australia, they run these things and they can choose what they put on and what they don't. We have pretty limited powers in relation to that, so we're pressing up against the edges of them. If we can improve that, that's a good thing, but, as a general principle, outsourcing censorship to foreign corporations is not a good idea.<sup>64</sup>

### **Over-censorship**

1.107 The risk of over-compliance is acknowledged by the government, but somehow is not seen as a threat to the freedom of expression of Australians by the government.

Given the fines that they're threatened with, they will no doubt overcensor. This is a serious threat to the Australian democracy and one that politicians should seek to protect against.<sup>65</sup>

1.108 The Institute of Public Affairs (IPA) drew attention to the Impact Analysis notes outlining that 'Over-Compliance is therefore an entirely foreseeable and, as acknowledged by the federal government, non-concerning feature of the bill.' The IPA reiterated this at the hearing stating:

It will have a big censorship effect. As you rightly say, there's a big fine—I think it's five per cent of global revenue—that the social media companies will be subject to if they fail to comply with the ACMA's directions or definition of 'misinformation' and what is false. Clearly there's going to be a 'censor first, ask questions later' approach that could be taken.<sup>66</sup>

1.109 Over-compliance would result in unnecessary censorship of content posted by Australians, and with the deterrence of such large fines should be the expected outcome if this bill were to pass, and a risk to our successful democracy.

1.110 DIGI, a group that has the companies that will primarily be impacted by the legislation as its members, raised concerns in their submission about penalties applying to 5 per cent of global revenue could incentivise overcompliance to ensure that they're not in breach:

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<sup>64</sup> Professor Anne Twomey, Private Capacity, *Committee Hansard*, 11 November 2024, p. 6.

<sup>65</sup> Mrs Michelle Pearse, Chief Executive Officer, Australian Christian Lobby, *Committee Hansard*, 17 October 2024, p. 20.

<sup>66</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 22.

This approach to penalties risks incentivising over-enforcement and removal of content, with the possible unintended adverse impacts to free expression and open communication.<sup>67</sup>

1.111 The Institute of Public Interest Journalism concurred that in its current form the bill incentivises over censorship to ensure compliance:

Again, not to duplicate what has been said previously, the incentive on the platforms under this bill would be to take down more speech than they otherwise would when subject to legal liability.<sup>68</sup>

1.112 Despite claims from other witnesses that they have an incentive to under comply, with such substantial penalties that are associated with breaches of the code, the revenue risk from under compliance is higher than that of over compliance, this provides a serious risk to Australians freedom of expression.

## **SUPPRESSION OF FREEDOM OF SPEECH**

1.113 Freedom of speech and expression are a cornerstone of western civilisation and open democracies. While Australia doesn't have legislated freedom of speech, the High Court has held that an implied freedom of political communication exists through our constitution as part of participation in a parliament elected by the people. As a signatory to the ICCPR, Australia is obligated to protect the right to freedom of expression. This includes '[the] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through an other media of his choice.'

1.114 This inquiry heard many witnesses concerned that this bill would impact Australians' right to freedom of expression, and risks stifling debate and views rather than encouraging free and open discourse that Australia has prided itself on.

1.115 The Australian Christian Lobby holds these concerns as one of the main reasons that they cannot support the bill, even if it meant that they were exempted from the terms of the bill:

Part of our democracy is the freedom to be able to speak our opinions even when they are unpopular. This is an attack on freedom of expression. It shouldn't just be religious people who have the right to say what they want to say through a carve-out; all people deserve this right.<sup>69</sup>

1.116 Witnesses held concerns around how this will impact public discourse, especially if somebody says something that is true, but at the time is thought

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<sup>67</sup> DIGI, *Submission 79*, p. 39.

<sup>68</sup> Mr Simon Harari, Head of Strategy and Policy, Public Interest Journalism Initiative, *Committee Hansard*, 17 October 2024, p. 66.

<sup>69</sup> Mrs Michelle Pearse, Chief Executive Officer, Australian Christian Lobby, *Committee Hansard*, 17 October 2024, p. 20.

false. They would risk being accused of spreading misinformation, even if what they are saying is true. The IPA spoke about this in their evidence to the inquiry:

You may say something that at the time you believe to be true, which is objectively true, but most people think is false. That could be called misinformation because you're misleading— because the current understanding is that it's wrong—and a year later you may be proved right. So not even the truth is a defence under these laws.<sup>70</sup>

1.117 Freedom of expression also provides for different cultural practices to be preserved. The evidence the committee heard from the First Nations Peoples Aboriginal Corporation held concerns that a lack of cultural understanding could lead to inappropriate censorship of First Nations views: 'We're worried about the lack of cultural understanding—that it might be either dismissed or misinterpreted because there's a western lens on empirical evidence and the accuracy of things like that, which could lead to inappropriate censorship.'<sup>71</sup>

1.118 Due to this lack of cultural understanding the committee heard that this could risk Aboriginal remedies that have existed for thousands of years as being flagged for misinformation.

Senator SHARMA: So they may be even further removed than the public servants from Indigenous culture and knowledge. Let's take one example, of traditional medicine or therapeutic remedies or healing. That is something that I imagine you might be concerned about.

Mr Willis: Yes.

Senator SHARMA: If you were to put something up online which was contraindicated in western medical advice, for instance, it could be taken down, as something that wouldn't meet the test of misinformation: 'verifiably false or could cause risk to public health'. Is that something you would be concerned about?

Mr Willis: I have to tell you, Senator Sharma, you must be reading my diary!<sup>72</sup>

1.119 These concerns could easily see First Nations culture and heritage suppressed to make sure that compliance with the bill is met. Decisions being made on what could be deemed misinformation would need to be able to understand the nuances of cultural differences. Without that there is a real risk that to avoid traditional practices of First Nations people could be deemed misinformation and removed from platforms.

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<sup>70</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 23.

<sup>71</sup> Mr Daniel Willis, Chief Executive Officer and Specialist Board Member, First Nations Peoples Aboriginal Corporation, *Committee Hansard*, 11 October 2024, p. 50.

<sup>72</sup> Mr Daniel Willis, Chief Executive Officer and Specialist Board Member, First Nations Peoples Aboriginal Corporation, *Committee Hansard*, 11 October 2024, p. 51.

1.120 Concerns around censorship of views and impacts on the freedom of expression, whether it was through government, or through social media companies, was a continued concern if the bill did pass with many witnesses citing it as a concern.

1.121 The IPA stated ‘This is about censoring the opinion of mainstream Australians. That will be the consequence of the bill.’<sup>73</sup> Channel Nine were clear in their position: ‘Our primary position is that this bill is censorship.’<sup>74</sup>

1.122 The Australian Human Rights Commissioner while supportive of the intent of the bill gave evidence that they don't think that the bill strikes the right balance to protect freedom of expression and couldn't support the bill:

[i]t's that we accept there is a need to combat misinformation and disinformation. They can cause serious harm. We don't feel the bill in its current form strikes that right balance in terms of the protections that it provides, particularly for freedom of expression, due to both the breadth of the definitions and the vagueness of the definitions but also the need for greater transparency, accountability and scrutiny mechanisms.<sup>75</sup>

1.123 The Institute for Public Interest Journalism held concerns that the bill could have a chilling effect on speech:

Of course. There is obviously an inherent risk to freedom of expression in any sort of regulation of speech such as this. At the moment the information-gathering powers that ACMA have are quite broad, and there is potentially a risk—in some respects, a second-order risk—of some sort of chilling effect on speech or, more specifically perhaps, on the platforms' response to speech, if we haven't narrowly focused ACMA's powers in these situations.<sup>76</sup>

1.124 The Victorian Bar held serious concerns around the impact to freedom of expression, not just in constitutional terms but in human rights terms:

What astonished us was then, when the Explanatory Memorandum came out, seeing that our point—namely, that there was a grave danger to freedom of expression—had been flipped on its head explicitly in the Explanatory Memorandum to encompass the very thing that we feared: that views, opinions, claims, invective and all the kinds of things that one sees on the internet that are not factual claims which are capable of verification are, according to the government's explanatory memorandum, encompassed in this bill. As Professor Twomey says, that's getting towards the heartland of constitutional freedom. As the Victorian Bar's submission makes clear, yes, we have a capital-C constitutional concern about the bill,

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<sup>73</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 11 October 2024, p. 29.

<sup>74</sup> Ms Larina Alick, Executive Counsel, Nine Entertainment, *Committee Hansard*, 11 October 2024, p. 8.

<sup>75</sup> Mrs Lorraine Finlay, Human Rights Commissioner, Australian Human Rights Commission, *Committee Hansard*, 17 October 2024, p. 27.

<sup>76</sup> Mr Simon Harari, Head of Strategy and Policy, Public Interest Journalism Initiative, *Committee Hansard*, 17 October 2024, p. 66.

but we also have a much broader concern about freedom of expression, whether expressed in human rights terms or not. That inclusion of 'opinions' and 'claims' within the definition of misinformation—not according to the text of the bill, mind you, but according to the explanatory memorandum—is what gives us grave concern. That's where the language came from. Our concern about the overreach of the bill has taken on a new life, in a very disturbing way, in our view.

- 1.125 These are just a small selection of the examples of worries and concerns around the impacts that this bill could have on Australians' freedom of expression amongst the thousands of Australians that made submissions to the inquiry. Without stronger protections for freedom of expression many witnesses and submitters could not recommend passing the bill.
- 1.126 The safeguarding of freedom expression being the biggest concern around this bill and drew significant commentary and attention. The government hasn't done enough to allay fears that freedom of expression could be stifled, and has failed to properly address these concerns.
- 1.127 Freedom of expression is incredibly important to our nation's culture, and to our democracy. This bill does not do enough to safeguard freedom of expression, and risks resulting in the suppression of particular rules.

## **EXTRA-TERRITORIALITY**

- 1.128 The extra-territorial clause in the bill places an expectation that the Australia will be able to police the content of overseas content providers, and apply to content that was posted outside of Australia.
- 1.129 Professor Twomey raised concerns with how these laws could be applied to businesses that are operated in other countries:

There could be issues about extraterritoriality and the extent to which our laws can apply to databases and stuff outside Australia. I guess that would be the thing that might be more problematic. I'm not so sure it's necessarily a constitutional problem. But if you've got more details about what they think the constitutional problem is—I've just never encountered this issue before.

Senator DAVID POCOCK: They won't give us the Solicitor-General's advice, but we may put something on notice to you, if that's alright.

Prof. Twomey: Well, I may not be able to tell you any more in two days than what I can now, I'm afraid, without an indication of what the problem is that they actually think is there. The only thing that springs to mind for me are issues about extraterritoriality. There's a reality issue about how our laws can apply to computers and businesses that operate in other countries that aren't here, and there are probably going to be all sorts of confidentiality aspects et cetera as well. Once you start interfering in laws in other countries there are real issues, but it's more a conflict of law sort of issue, I think.

- 1.130 While the intent of these laws is that they apply no matter where the platform operates from, it may not be possible to apply it to businesses that operate

overseas. This will in effect encourage businesses to pull operations out of Australia so that these laws don't apply to them while still being able to provide the content into Australia. Brian Marlow from CitizenGo outlined that this would be the first step that these companies would make:

If I ran one of the major social media giants—Facebook, Google or even X—I would merely shut down my Australian operations, operate out of America, where I have free speech amendment protections, and completely ignore whatever your legislation says. I know you're not going to shut me down, so I would just continue to operate.

1.131 The committee heard evidence that the election of President-Elect Donald Trump that the bill could impact our relationship with the United States. This was based on comments made prior to the election by Vice-President Elect JD Vance that they would penalise nations who didn't protect free speech.

1.132 Mr Marlow from CitizenGo expressed that the bill would be ineffective with no way to enforce the codes:

Senator ROBERTS: Thank you to CitizenGO for attending and also for your submission. President Trump, who's just been swept to power, promises to dismantle the censorship regime globally. The vice-president-elect, JD Vance, has in the last few days indicated that the United States would penalise nations for adopting the exact measures contained in this bill. What effect will this have on the operability of this bill? Is this bill likely to undermine AUKUS?

Mr Marlow: Yes, it is, and the outcome of what President-elect Trump has said effectively makes this bill null and void and dead in the water.

1.133 The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) did not provide a direct response when asked if they had sought advice from the Department of Foreign Affairs and Trade about whether this bill would have an impact on our relationship with the USA, with particular reference to Vice-President Elect JD Vance's comments that they would stop supporting a military alliance if it [Australia] isn't going to be pro free speech. A failure to provide evidence that they had sought advice on this issue means that Senators are unable to determine if there would be an impact, and would have to take the comments from the incoming Vice-President at face value. As a result, this could negatively impact our relationship with the USA.

1.134 When asked if the bill would impact on American Citizens' First Amendment rights, the department stated that they had not assessed this issue, and didn't clarify whether they had specifically consulted with the Department of Foreign Affairs and Trade. With our alliance with the USA being pivotal to Australia's national defence interests, these concerns should be first canvassed before considering legislation that could damage our relations so Senators can give due consideration to the issues at play and the wider ramifications of a bill of this nature.

- 1.135 In addition the Explanatory Memorandum takes the unusual step of commenting on both Germany and Italy's political situation, including accusations of the governing parties of spreading fake news.
- 1.136 When asked if they had consulted with the Department of Foreign Affairs and Trade about the bill, DITRDCA confirmed they had consulted with the Department of Foreign Affairs on the bill. In response to questions taken on notice from the hearing held on 11 November 2024, DITRDCA stated that they consulted with the Department of Foreign Affairs and Trade on the bill, but did not answer the question whether they consulted with DFAT about the commentary on the German and Italian political situation.
- 1.137 The failure to answer this question, or provide an adequate explanation as to why there is commentary of a foreign partner's political situation raises concerns with how this bill could impact our relationships with other countries. While we need to govern in our own interests, providing commentary on the government of another nation within an Explanatory Memorandum without clear advice from Department of Foreign Affairs and Trade, sets a worrying precedent for our relationships with other nations.

## INNOVATION AND INDUSTRY

### **Stifle innovation**

- 1.138 Witnesses raised concerns this bill, if implemented, would stifle innovative and new methods social media companies might explore to respond to the threat of disinformation in particular, but also misinformation on their platforms.
- 1.139 DIGI, the industry association that advocates for digital industry in Australia, and counts social media companies amongst its members, said in evidence:
- We want to have sufficient flexibility so that companies are actually able to innovate in the way that they respond to the most serious threats, in particular the threat of disinformation. One of the advantages of the self-regulatory tool is it does allow that flexibility...Once you go into a co-regulatory or a very strict regulatory situation, where the regulator lays down standards, then the potential to change those rules is more limited and you potentially focus platforms on compliance rather than on innovating their responses...the way that actors are propagating disinformation is constantly changing and the tactics they use change.
- 1.140 It is not in the interests of Australians, rightly concerned about the spread of genuine misinformation and disinformation, for the social media companies to be restricted in their ability to respond, either because the ACMA may not consider their new and innovative responses to be sufficient to meet requirements, or because the mandatory codes restrict the flexibility of companies to deploy new methods for detecting and responding to disinformation.

## Stifle new ideas

1.141 The restrictions and likely censorship proposed in this bill would ultimately have the effect of stifling speech, and therefore restrict the free flow of ideas in the Australian community. The Victorian Bar in evidence before the committee stepped through this effect in reference to a thought experiment proposed by Senator Sharma.

1.142 When asked how this measure might apply to the ideas of Copernicus or Galileo, – ideas that did not accord with conventional wisdom of the day – could they be said to be misinformation or disinformation, Mr McComish on behalf of the Victorian Bar said:

'There is a grave risk that that is so and that is in part because of the very wide definition of 'harm'. We have ticked the box. It is information because it is a claim, says the explanatory memorandum. It is reasonably verifiable as false because most people say it is false. We then ask: does it not cause but contribute to harm? I don't think it would be too difficult – remembering the first decision-maker is the platform; the next decision-maker is ACMA – for them to say, 'Well, look, that undermines confidence in the Medici Bank or whatever it is; therefore, there is a harm to the economy.' Or 'It dissuades people from doing exercise because they have joined a convent or something like that; therefore, there is a harm to public health because of the social disorder caused by this pernicious view.'

1.143 It follows that an Australian offering new ideas in a social media setting, ideas that do not accord with today's conventional wisdom, are unpopular, and might untimely prove true or not, would be required to be censored by social media companies because the claim is 'verifiably false' (because most people say it is), and contributes to one or more 'serious harms' contained in the bill, whether or not the harm in question does actually ever arise.

1.144 Australians must be able to think freely, and to say what they think, and to share it online. If Australians have bold new ideas, they should be free to explore them with their community whether online or offline, without undue interference from their government as would happen if this bill were to pass.

1.145 Many witnesses and submissions raised concerns the proposed bill contained an overreach of ministerial power which granted the Minister for Communications the authority to personally initiate misinformation investigations and misinformation hearings. This discretionary power, coupled with provisions that could lead to imprisonment, undermines fundamental democratic principles and opens the door to censorship and stifling free speech.

1.146 The Department of Infrastructure confirmed the Ministers power to instruct ACMA to direct and instruct ACMA to investigate and hold hearings:

Senator SHARMA: But, to be clear, ACMA has the power to conduct investigations. The minister has the power to direct ACMA to investigate.

Mr Kursar: Correct.

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Senator SHARMA: ACMA has the power to hold hearings and the minister has the power to instruct ACMA to hold hearings. Correct?

Mr Kursar: Correct.

1.147 Mr Blanks of NSW Council for Civil Liberties also stated:

The concern is that there are not clear and adequate remedies where this can be debated. You don't want to give government or a government agency the final dictatorial power. Yes, they should be able to exercise a power but the power ought to be challengeable, and it ought to be challengeable in the courts.

1.148 Nationals Senators support the withdrawal of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 from the Notice Paper.

**Senator Ross Cadell**  
**Member**

**Senator the Hon Matthew Canavan**  
**Participating Member**



# Australian Greens' Dissenting Report

- 1.1 The mass distribution of mis- and disinformation is a growing danger to democracy, public discourse, health and safety both in Australia and around the world and needs to be tackled. Those responsible for the distribution of false or misleading information intended to harm must be held to account, and the platforms whose algorithms allow for its spread must be reined in.
- 1.2 Unfortunately, this bill did not get to the heart of these issues. It had concerning exemptions and broad, ambiguous definitions that would hand over responsibility to social media platforms to determine what is true and what isn't.
- 1.3 As raised by many notable lawyers and experts in the inquiry, the definition of misinformation was not just confined to matters of fact, but was explicitly said in the explanatory memorandum to include 'opinion, claims, commentary and invective' - which raised many questions and concerns in the community about what is true, and who gets to decide that. These broad definitions combined with the co-regulatory framework meant handing significant responsibility to digital platforms, controlled by the likes of Elon Musk, to decide what content fits under these definitions when it comes to misinformation.
- 1.4 Many individuals were concerned about how this would impact their ability to publish their opinions or news commentary online. While individuals would not receive criminal penalties under the legislation, submitters and witnesses did raise concerns that the bill did not do enough to prioritise and tackle the most risky content capable of reaching wide audiences - i.e. the deliberate mass distribution of false and misleading information, over individual posts shared with friends.
- 1.5 The Australian Greens were also concerned from the outset about the carve out for mainstream media. Murdoch's media empire has a history of peddling mis- and disinformation about climate, public health and elections, and yet they were exempt, according to the Government, as they are already subject to their own editorial standards. However, considering that Youtube has suspended Sky News from its platform for disinformation before while the Australian Communications and Media Authority (ACMA) couldn't take action on that same content playing on TVs, it's clear that these codes aren't strong enough to tackle mis- and disinformation in the media, and that this was nothing more than a carve out to appease their mates.
- 1.6 Ultimately, the Greens determined that these concerns raised throughout the inquiry and by community members greatly risked undermining the intent of the legislation. We are glad to see the Australian Government has decided to withdraw their bill in line with calls from the community and the Parliament.

- 1.7 The Government must now turn its mind to comprehensive reforms that put responsibility on digital giants to make their platforms safe for all users, including when it comes to mis and disinformation. Many experts are calling for an EU-style approach that tackles the dangerous algorithms that fuel division and damage democracy and implement critical transparency and privacy measures. Rather than rushing through bills like this or the reckless social media age ban, the Government must show they are serious about online safety, and prioritise legislating a digital duty of care to hold platforms accountable.

**Senator Sarah Hanson-Young**  
**Deputy Chair**

# Senator Roberts' Additional Comments

- 1.1 I thank the witnesses for their submissions and for attending the hearings.
- 1.2 The committee report into the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 flies in the face of the expert evidence the committee has received across three days of hearings into the bill.
- 1.3 A committee inquiry should not perform the function of gift wrapping a decision which has already been taken. A committee inquiry should have the role of deciding if the decisions taken in the bill are correct.
- 1.4 For three days, the committee heard from human rights advocates and stakeholders who all criticised this bill on human rights grounds, and added warnings the bill would backfire.
- 1.5 It is extraordinary the committee would choose to ignore the recommendations of the very people who they invited to attend to advise them on this matter.
- 1.6 The committee has made a mockery of the committee process. This is an action which will make it harder for any Senate inquiry in the future to attract the quality of witnesses this inquiry attracted.

## Human rights

- 1.7 The Australian Human Rights Commission questioned a basic foundation of the bill – the definition of ‘information’. In the Explanatory Memorandum the term ‘is intended to include opinions, claims, commentary and invective’.<sup>1</sup>
- 1.8 The Australian Human Rights Commission stated ‘considerable caution should be exercised before including opinions and commentary within the scope of “information” as this significantly broadens the potential reach of this legislation and increases the risk of it being used to censor legitimate debate about matters of public importance.’<sup>2</sup>
- 1.9 One Nation agrees with this concern. The bill misconstrues human rights as relative, indeed as subordinate to the need of government to suppress opinions they don’t like.
- 1.10 The Human Rights Law Centre recommended Clause 11(e) should be amended to reflect a broader commitment to human rights in the bill’s objectives. It also recommended the Australian Human Rights Commission should be consulted on the development of codes.

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<sup>1</sup> Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024, *Explanatory Memorandum*, p. 44.

<sup>2</sup> Australian Human Rights Commission, *Submission 66*, [p. 6].

- 1.11 Several submissions related to the specific areas of misinformation. The Australian Medical Professional Society submitted:

By centralising control over what constitutes medical ‘truth’ in the hands of government regulators, we risk creating an even more Orwellian twist in a system that is already subject to manipulation by powerful interests, to further suppress inconvenient facts and legitimate debate. This would be disastrous not only for free speech and democracy, but for public health as well.<sup>3</sup>

- 1.12 The report failed to address a critical failing in the debate around COVID. Namely that information presented as medical truth at the time has been proven to be wrong, and information banned as misinformation has now been proven to be true.
- 1.13 On the issue of COVID messaging, One Nation has maintained a contrary position to the Government of the day since 2020. This followed expert testimony from multiple specialists, research doctors and whistle blowers which contradicted the official narrative.
- 1.14 The implication is simple – what is misinformation one day is truth the next. This is the danger in the Government deciding what is and is not misinformation. The bias will always be in favour of the government’s ‘truth’.

### **Religious freedom**

- 1.15 The submission from the Combined Faith Leaders drew attention to possible encroachment on religious freedoms:

The Bill’s definitions of ‘misinformation’ and ‘disinformation’ are so broad, that they could easily capture legitimate, good-faith expression of religious, moral and political opinions...<sup>4</sup>

- 1.16 This concern was supported by the Australian Christian Lobby, which argued the bill violates freedom of expression. The committee chose instead to rely on evidence from the AMAN Foundation, which for clarity has the object of preventing physical and psychological harm to the Australian Muslim community caused by Islamophobia and racism. Their submission stated in part:

I would say that there are boundaries to that which our law provides. Vilification is one such boundary. Incitement of hatred, severe ridicule, contempt or anything that violates section 18C of the Racial Discrimination Act are legitimate bounds on freedom of expression.<sup>5</sup>

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<sup>3</sup> Australian Medical Professional Society, *Submission 58*, [p. 3].

<sup>4</sup> Combined Faith Leaders, *Submission 70*, p. 2.

<sup>5</sup> Ms Rita Jabri Markwell, Legal Adviser, Australian Muslim Advocacy Network, *Proof Committee Hansard*, 11 November 2024, p. 26.

1.17 One Nation opposes religious debate being included in mis- and disinformation legislation. There are multiple other avenues for the offended to seek redress, including courts of law. This bill can only offer the punitive powers of a bureaucracy operated without any legal checks and balances, which should never be let near religion.

### **Who is the arbiter of truth?**

1.18 Finally, the question so many asked – who decides what is and is not misinformation? The answer which the Government has studiously avoided saying is indeed the Australian Communications Media Authority (ACMA). ACMA will be the arbiter of truth in the policing of the Code and decide if the code has been broken by way of a platform failing to remove mis- and disinformation. By definition, this requires ACMA to decide what is and is not mis- and disinformation.

1.19 It is entirely unacceptable that the Government will decide if an item which may be critical of the Government is mis- and disinformation or not. This is a fundamental flaw of the bill, setting up the government to be judge, jury and executioner.

### **Recommendation 1**

**1.20 The Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 (Cth) should not be passed in its current form.**

### **Recommendation 2**

**1.21 The Misinformation and Disinformation provisions should be removed from the bill.**

### **Recommendation 3**

**1.22 A provision should be included which requires the Minister to take advice from the Human Rights Commission before finalising a code under the bill.**

1.23 However, the bill does contain provisions necessary to regulate social media platforms in a way which benefits the Australian people. These provisions should be retained in a new bill. These are as follows:

### **Inauthentic behaviour**

1.24 Google's submission stated:

... at the very least the ACMA's code and standard making powers' should be limited to 'disinformation that involves inauthentic behaviours.'<sup>6</sup>

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<sup>6</sup> Google, *Submission 86*, p. 9.

- 1.25 Such behaviour includes impersonation. I have had to contend with many fake accounts on social media. I am sure my experience is one shared by other Senators.
- 1.26 Inauthentic behaviour also extends to bot armies used to influence opinion, conduct mass reporting of political opponents, influence the outcome of paid advertisements and many other behaviours which reduce the enjoyment and utility of social media.
- 1.27 CyberCX emphasised the increasing sophistication of AI-enabled disinformation campaigns, using thousands of fake or hijacked accounts.<sup>7</sup>

#### **Recommendation 4**

##### **1.28 The provisions relating to inauthentic behaviour remain in the bill**

#### **Media literacy**

- 1.29 The Media Literacy provisions of the bill require platforms to ‘publish a current media literacy plan for their platform setting out the measures the platform will take to enable end-users to better identify mis- and disinformation and identify the source of content disseminated on the platforms’.
- 1.30 While this provision has been written for the mis- and disinformation aspects of the bill, the same is true of any post. Thinking for oneself is a critical skill that has been noticeably absent on social media, with scams and obviously false statements being treated as real.
- 1.31 One Nation would support retaining these provisions, expressed in a wider sense of assisting social media users with the skills to better determine truth, or more accurately, teaching people how to think for themselves again.
- 1.32 X’s Community Notes should be a part of this conversation. Community Notes acts as a crowd-sourced mis- and disinformation detector.

#### **Recommendation 5**

##### **1.33 Media Literacy remain in the bill and used to assist in educating users on how to examine the veracity of a post. Platforms should be required to have either a function like Community Notes or a Media Literacy program.**

#### **Complaints handling**

- 1.34 The bill includes a requirement on platforms to provide a complaint handling system. Currently if a user is banned or perhaps an advertising budget is used up and no benefit has accrued to the advertiser, there is no recourse. One Nation believes platforms should have a complaints mechanism which would allow mistakes to be corrected and explanations issued. In turn this improves

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<sup>7</sup> CyberCX, *Submission 80*, pp. 4–6.

understanding of the system on the part of users, which will hopefully reduce the complaints over time.

1.35 This should also relate to reported posts that remain up.

### **Recommendation 6**

**1.36 A complaint handling system should remain in the bill**

### **Data access**

1.37 The House of Representatives added additional provisions around data access by third parties. One Nation supports those amendments. Further provisions should be added to ensure the material is used for bona fide research and does not find its way into the hands of social media marketing or data trading entities.

### **Recommendation 7**

**1.38 Data access provisions should be retained with added protections around their use.**

### **Inclusion of search engines**

1.39 Google suggested search engines should be excluded from the bill. One Nation agrees with this position. Search engines have a vested interest in ensuring the content they send customers satisfies their search intent. Included in that process is the material being authentic. Google spends significant resources to verify the legitimacy of the material they index, often doing this by site rather than at an article level.

1.40 Including search engines in the bill will have unintended consequences. Most likely search engines will favour large establishment media outlets and websites, reducing search reach for small, independent researchers and emerging news sites.

1.41 This will create or more accurately entrench an establishment monopoly on news and current affairs.

1.42 Should mis- or disinformation be present in a search result, that would surely be an issue for the website hosting the content, not the search engine that has indexed it.

### **Recommendation 8**

**1.43 Search engines should be excluded from the bill.**

### **Transparency, information gathering and reporting**

- 1.44 The bill would ‘impose core transparency obligations on digital platforms requiring them to be upfront about what they are doing on their services to combat mis- and disinformation’.<sup>8</sup>
- 1.45 This statement is not strictly speaking true. The reporting, information gathering and transparency measures go the whole Code, not just the mis- and disinformation aspects of it. In fact even with the mis- and disinformation provisions removed the bill is largely intact.
- 1.46 One Nation supports the transparency, data gathering and reporting provisions in the bill as they would cover inauthentic behaviour, media literacy, complaints handling and data access.

### **Recommendation 9**

- 1.47 The transparency, data gathering and reporting provisions of the bill should be retained.**

### **Time limits**

- 1.48 There are no time limits on mis- and disinformation. There have been cases of persons posting something which was acceptable or considered true at the time, but years later the person has been banned for ‘disinformation’. There must be a time limit to how far back a platform can be held to account. While One Nation opposes mis- and disinformation provisions, it would still be wise to make the bill forward looking not retrospective.

### **Recommendation 10**

- 1.49 Material older than 12 months should not be included in the scope of the bill.**

**Senator Malcolm Roberts**

**Participating Member**

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<sup>8</sup> The Hon Michelle Rowland, Minister for Communications, *House of Representatives Hansard*, 12 September 2024, p. 8.

# Dissenting Report from Senator David Pocock

## Introduction

- 1.1 Social media companies have extraordinary power and influence, and have become a central part of our society. While there is broad support for action on mis- and disinformation that circulates on social media, few agree that this bill takes the right approach. Based on the information the committee heard, I believe a more effective approach to addressing the harms caused by social media companies would be to focus on transparency, through data access for accredited researchers, and to eliminate inauthentic human actors, otherwise known as bots.
- 1.2 The bill focuses on minimising the harmful effects of mis- and disinformation on digital platforms. Mis- and disinformation are issues on digital platforms, but they stem from the platforms' algorithms which are driven by outrage and polarisation. This leads to the amplification of mis- and disinformation, but also other types of harmful content such as information promoting eating disorders and suicide, as well as other graphic and extreme content. These digital platforms understand what content demands our attention the most and use algorithms to keep feeding it to users until in some cases, there is no turning back. The algorithms, and the incentive structures behind them, are causing serious harm.
- 1.3 For this reason, I think the bill takes the wrong approach and in doing so, creates an unnecessary risk to freedom of speech. As constitutional law expert Professor Anne Twomey AO said in her opening statement to the committee:

Misinformation and disinformation are insidious and widespread through social media platforms. I would like very much to see it all disappear. But I worry that in the process of ineffectually trying to do this, we create worse problems through large scale censorship of contested views and the undermining of democracy in the name of cleansing it from misinformation. What is particularly worrying about this legislation is that responsibility is being outsourced to large overseas companies over which Australia has little control or influence. It could all go very wrong.<sup>1</sup>
- 1.4 While mis- and disinformation do cause harm, it seems strange to specifically target that while neglecting broader online safety measures, such as implementing all the recommendations from the review of the *Privacy Act 1988* (Privacy Act). These Privacy Act changes should be implemented to create a stronger base for all other legislative changes we make to our digital ecosystem. From there, we can take a systems approach to regulating platforms rather than

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<sup>1</sup> Professor Anne Twomey, AO, Opening Statement, 11 November 2024.

trying to address individual issues one by one. As the Human Rights Commissioner said:

Dealing with these things in isolation raises concerns for us about the consistency of the framework that we'll end up with, and that raises concerns for the ability of individual Australians to actually be able to engage and understand the laws that they're meant to comply with.<sup>2</sup>

## Data Access

1.5 The Australian Government initially said it was unconstitutional to provide access to researchers, then moved an amendment to allow access in limited circumstances. I believe this data access should be expanded beyond data related only to mis- and disinformation. Researchers should be able to analyse all types of data so we can better understand how social media companies and platforms are impacting our communities through algorithms and targeting of content. As Miss Alice Dawkins, Executive Director, Reset Tech Australia said:

With access to the same data available to EU researchers under the Digital Services Act scheme, "We would be able to much more comprehensively understand what's going on with bot accounts. Of course it wouldn't be perfect data—I want to make that very obvious. We are working with compromises constantly...we would have the ability to get much bigger sample sizes and much more creditable estimations of inauthentic activity on Australian social media. It is squarely in the public interest for that work to be able to be done."<sup>3</sup>

1.6 This is further highlighted by researchers who were trying to research the impact social media platforms have on polarisation, saying:

Many critics raise concerns about the prevalence of 'echo chambers' on social media and their potential role in increasing political polarisation. However, the lack of available data and the challenges of conducting large-scale field experiments have made it difficult to assess the scope of the problem.<sup>4</sup>

## Bot accounts

1.7 Bots do not have the human right to free speech. The committee heard convincing evidence that bots, as artificial entities, do not possess right to freedom of speech. As the AHRC pointed out, 'human rights by their very definition reside in humans.'

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<sup>2</sup> Mrs Lorraine Finlay, Human Rights Commissioner, Australian Human Rights Commission, *Proof Committee Hansard*, 17 October 2024, p. 31.

<sup>3</sup> Miss Alice Dawkins, Executive Director, Reset Tech Australia, *Proof Committee Hansard*, 11 October 2024, p. 21.

<sup>4</sup> Brendan Nyhan et al, 'Like-minded sources on Facebook are prevalent but not polarizing', *Nature*, 27 July 2023.

- 1.8 Numerous other witnesses agreed that bots do not have the human right to free speech. A representative of the Human Rights Law Centre (HRLC) stated clearly that non-human actors do not have freedom of expression or any human rights.<sup>5</sup> When I asked if non-human actors, essentially bots, have freedom of expression and some sort of human right, the HRLC representative definitively responded 'No.'<sup>6</sup>
- 1.9 And from the Institute of Public Affairs (IPA): 'I don't think bots do have freedom of speech, so I don't think that they should be entitled to the same rights and freedoms that people have.'<sup>7</sup>
- 1.10 These quotes reflect a consensus that the right to freedom of speech is reserved for humans and should not extend to artificial systems or entities like bots.
- 1.11 The committee also heard powerful evidence about how bots can be used to influence public perception on certain topics and weaponised by foreign adversaries to further their own agendas.
- 1.12 CyberCX spoke about how they uncovered the 'Green Cicada Network' which was a china-linked disinformation campaign on X while Ms Julie Inman Grant, e-Safety Commissioner, Office of the e-Safety Commissioner, said:
- ...we have botnets or bot armies and bots that are proliferating dis- and misinformation. There was a study done in the US last week which said that some of the Russian inspired bots that were active during the 2020 election are still all over X.<sup>8</sup>
- 1.13 Miss Alice Dawkins, Executive Director, Reset Tech Australia, explained how they have comprehensively and very effectively mapped Kremlin disinformation and pro-Russian bot networks. They've also looked at potential Chinese state interference on bot networks as well through the use of highly technical but advanced methodologies. These are methodologies that are available to European researchers under the Digital Services Act scheme.<sup>9</sup>
- 1.14 While bots may be good for business bottom lines by bolstering account numbers and perceived engagement, they are a risk to good faith online discourse and social cohesion. They do not have a right to freedom of speech

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<sup>5</sup> Mr David Mejia-Canales, Senior Lawyer, Human Rights Law Centre (HRLC), *Proof Committee Hansard*, 11 November 2024, p. 4.

<sup>6</sup> Mr Mejia-Canales, HRLC, *Proof Committee Hansard*, 11 November 2024, p. 4.

<sup>7</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs (IPA), *Proof Committee Hansard*, 11 October 2024, p. 27.

<sup>8</sup> Ms Julie Inman Grant, e-Safety Commissioner, Office of the e-Safety Commissioner, *Proof Committee Hansard*, 17 October 2024, p. 31

<sup>9</sup> Miss Dawkins, Reset Tech Australia, *Proof Committee Hansard*, 11 October 2024, p. 20

and are being weaponised to influence views on different topics, including in elections.

### **Concluding comments**

- 1.15 The bill in the form that passed the House of Representatives should not be passed.
- 1.16 The Australian Government should bring forward a bill that legislates access for researchers to be able to look at what is happening inside social media platforms - from algorithms to mis and disinformation, moderating harmful content, advertising and non-human accounts.

### **Recommendations**

#### **Recommendation 1**

- 1.17 The bill should not be passed.

#### **Recommendation 2**

- 1.18 The Australian Government should introduce legislation to provide researchers with the access to social media companies necessary to study, understand and communicate the impact of social media on our society.

#### **Recommendation 3**

- 1.19 The Australian Government should introduce legislation that places an obligation on social media companies to remove bot accounts that impersonate humans, and clearly label all legitimate bot accounts.

#### **Recommendation 4**

- 1.20 The Australian Government should introduce legislation for media literacy training throughout Australian schools as well as broader society, with the objective of helping people understand how to think critically about the information they see and how to verify claims.

**Senator David Pocock**  
**Participating Member**

# Appendix 1

## Letter from the Minister for Communications



**The Hon Michelle Rowland MP**

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**Minister for Communications  
Federal Member for Greenway**

Senator Karen Grogan  
Chair of Environment and Communications Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

[senator.grogan@aph.gov.au](mailto:senator.grogan@aph.gov.au)

Dear Senator Grogan

### **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024**

Seriously harmful mis and disinformation poses a threat to safety, the integrity of elections, democracy and national security, with 80% of Australians wanting action.

I acknowledge Members of the House crossbench who worked constructively with Government to refine the Bill and support its passage through the House. However, based on public statements and engagements with Senators, there is no pathway to legislate this proposal through the Senate.

The Government has decided to not proceed with the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024. I ask that the Committee recommend to the Senate that the Bill be withdrawn, noting the merits of the Bill, while acknowledging a viable pathway does not exist.

It is incumbent on democracies to grapple with these challenges in a way that puts the interests of citizens first.

The Government invites all Parliamentarians to work with the Government on other proposals to strengthen democratic institutions and keep Australians safe online, while safeguarding values like freedom of expression. These include:

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The Hon Michelle Rowland MP  
PO Box 6022, Parliament House Canberra  
Suite 101C, 130 Main Street, Blacktown NSW 2148 | (02) 9671 4780

- The Attorney-General has already achieved a vital and urgent first step – legislating to strengthen offences targeting non-consensual and sexually explicit deep fakes.
- The Special Minister of State has progressed a proposal to enforce truth in political advertising for elections.
- The Minister for Industry and Science is progressing reforms on regulation of Artificial Intelligence.

This is an evolving threat and we must continue to improve safeguards to ensure digital platforms offer better protections for Australians.

Yours sincerely

A handwritten signature in blue ink that reads "Michelle Rowland". The signature is written in a cursive, flowing style.

Michelle Rowland MP

22 / 11 / 2024

cc Senator the Hon Penny Wong, Minister for Foreign Affairs, Leader of the Government in the Senate

## Appendix 2

### Submissions and additional Information

- 1 Community Broadcasting Association of Australia
- 2 Australian Press Council
- 3 Australian Communications and Media Authority
- 4 Australian Electoral Commission
- 5 New South Wales Council for Civil Liberties
- 6 First Nations Peoples Aboriginal Corporation
  - 6.1 Supplementary to submission 6
- 7 Independent Order of Benedictines
- 8 Australia Exits the WHO
- 9 Pauline Hanson's One Nation WA
- 10 COVERSE
- 11 Community Advocacy Eastern Region
- 12 Croakey Health Media
- 13 Dr Nicholas Coatsworth
- 14 Catholic Women's League Association
- 15 Australian Environment Foundation
- 16 The Institute of Environment and Nutritional Epigenetics
- 17 Australians for Science and Freedom
- 18 National Civic Council
- 19 Australian Institute for Progress
- 20 The United Australia Party
- 21 Shooters, Fishers and Farmers Party of Tasmania
- 22 Council for National Interest
- 23 Christian Faith and Freedom
- 24 Feminist Legal Clinic
- 25 Reset Tech Australia
- 26 Libertarian Party SA
- 27 Property Owners Association of Victoria
- 28 FUSION: Science, Pirate, Secular, Climate Emergency
- 29 Australian Muslim Advocacy Network Foundation
- 30 Fighting Harmful Online Communication
- 31 Interactive Games and Entertainment Association
- 32 Sporting Shooters Association of Australia
- 33 Active Watchful Waiting Inc.
- 34 Australian Lawyers Alliance
- 35 Digital Rights Watch
- 36 Australian Associated Press

- 37 Australian Broadcasting Corporation
- 38 ANU Law Reform and Social Justice Research Hub
- 39 Australian Forest Products Association
- 40 Australian Catholic Bishops Conference
- 41 Queensland Council for Civil Liberties
- 42 Valid Agenda Pty Ltd
- 43 Australian Christians Party
- 44 Institute of Public Affairs
  - Attachment 1
- 45 Christ the Good Shepherd Church
- 46 Mudgee District Environment Group
- 47 CitizenGO Australia
  - Attachment 1
- 48 Australian Citizens Party
- 49 Responsible Future (Illawarra Chapter) Inc.
- 50 Uniting Church in Australia
- 51 HEART Party
- 52 Australian Bitcoin Industry Body
- 53 Executive Council of Australian Jewry
- 54 Constellation Partners
- 55 Commercial Radio & Audio
- 56 Institute for Civil Society
- 57 Sibley Lawyers
- 58 Australian Medical Professionals Society
- 59 Australian Democracy Network
- 60 Human Rights Law Centre
- 61 News Corp Australia
- 62 The Victorian Bar Inc.
- 63 Snap Inc.
- 64 SBS
- 65 Australian Christian Lobby
- 66 Australian Human Rights Commission
- 67 Australian Feminists for Women's Rights
- 68 Mr Garth Hamilton MP
- 69 Ms Stephanie Eaton
- 70 Combined Faith Leaders
- 71 Mr Nick McGowan MP
- 72 Free TV
- 73 Federation of Ethnic Communities' Councils of Australia
- 74 Department of Infrastructure, Transport, Regional Development,  
Communications and the Arts
- 75 Law Council of Australia
- 76 Comms Declare

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- 77 Australian Communications Consumer Action Network
  - 78 Media Entertainment & Arts Alliance
  - 79 Digital Industry Group
  - 80 CyberCX
  - 81 Aligned Council of Australia
    - 81.1 Supplementary to submission 81
  - 82 Public Interest Journalism Initiative
  - 83 Australian Jewish Association
  - 84 NSW Council of Churches
  - 85 RMIT FactLab
  - 86 Google
  - 87 Department of Home Affairs
  - 88 Clarence Climate Action
  - 89 Christian Schools Australia
  - 90 Australian Media Literacy Alliance
  - 91 TikTok Australia
  - 92 Tasmanian Climate Collective
  - 93 Canberra Declaration
  - 94 The Stewardship Centre
  - 95 Turning Point Australia
  - 96 Democratic Labour Party Queensland
  - 97 Billboard Battalion Inc.
  - 98 UTS Centre for Media Transition
  - 99 Currie Country Social Change
  - 100 Bank Reform Now
  - 101 World Council for Health Australia
  - 102 Family Voice Australia
  - 103 Tattarang
  - 104 Flag on the Hill
  - 105 Free Speech Union of Australia

### **Additional Information**

- 1 Australian Broadcasting Corporation, Correction of Evidence, Public Hearing 17 October 2024 (received 17 October 2024)
- 2 Human Rights Law Centre, Alignment of bill with principles (received 12 November 2024)
- 3 Human Rights Law Centre, Rights First Digital Platform Regulation (received 12 November 2024)
- 4 Australian Muslim Advocacy Network, Correction of Evidence, Public Hearing 11 November 2024 (18 November 2024)
- 5 Digital Platform Transparency Annual Reports, received from DIGI (received 1 November 2024)

- 6 Representative samples of individual contributions, received approximately 8,000 times
- 7 Representative samples of campaign letter (with variations) received over 4,500 times
- 8 Campaign letter received over 400 times
- 9 Representative samples of campaign letter (with variations) received over 80 times
- 10 Campaign letter received over 530 times
- 11 Representative samples of campaign letter (with variations) received over 1800 times
- 12 Campaign letter received over 280 times
- 13 Representative samples of campaign letter (with variations) received over 230 times
- 14 Campaign letter received over 60 times
- 15 Representative samples of campaign letter (with variations) received over 60
- 16 Representative samples of campaign letter (with variations) received over 30 times

**Answer to Question on Notice**

- 1 Community Broadcasting Association of Australia, answers to questions on notice 11 October 2024 and answers to written questions on notice from Senator Darmanin 14 October 2024 (received 17 October 2024)
- 2 Reset Tech Australia, answers to written questions on notice from Senator David Pocock 11 October 2024 (received 18 October 2024)
- 3 Australian Communications Consumer Action Network, answers to written questions on notice from Senator Darmanin 14 October 2024, (received 17 October 2024)
- 4 Croakey Health Media, answers to written questions on notice from Senator Darmanin, 14 October 2024 (received 21 October 2024)
- 5 UTS Centre for Media Transition, answers to written questions on notice from Senator David Pocock 11 October 2024 (received 18 October 2024)
- 6 Free TV Australia, answers to questions on notice, 11 October 2024 (received 21 October 2024)
- 7 Free TV Australia, answers to written questions on notice from Senator Darmanin, 14 October 2024 (received 21 October 2024)
- 8 Nine Entertainment, answers to questions on notice, 11 October 2024 (received 18 October 2024)
- 9 Nine Entertainment, answers to written questions on notice from Senator Darmanin, 14 October (received 18 October 2024)
- 10 Digital Rights Watch, answers to written questions on notice from Senator Darmanin, 14 October 2024 (received 25 October 2024)
- 11 Seven West Media, answers to questions on notice, 11 October 2024 (received 21 October 2024)

- 12 ABC, answers to questions on notice, 17 October 2024 (received 24 October 2024)
- 13 Uniting Church in Australia, answers to questions on notice, 17 October 2024 (received 23 October 2024)
- 14 Australian Electoral Commission, answers to questions on notice, 17 October 2024 (received 24 October 2024)
- 15 SBS, answers to questions on notice, 17 October 2024 (received 25 October 2024)
- 16 Australian Human Rights Commission, answers to questions on notice, 17 October 2024 (received 25 October 2024)
- 17 DIGI, answers to questions on notice, 17 October 2024 (received 1 November 2024)
- 18 eSafety Commissioner, answers to questions on notice, 17 October 2024 (received 1 November 2024)
- 19 Australian Communications and Media Authority, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 1 November 2024)
- 20 Australian Securities Exchange, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 4 November 2024)
- 21 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 22 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 23 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 24 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 25 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 26 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 27 ASIO, answers to written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 28 Australian Banking Association, written questions on notice from Senator Grogan, 22 October 2024 (received 5 November 2024)
- 29 Australian Communications and Media Authority, Answers to questions on notice 11 November 2024 (received 13 November 2024)

- 30 Australian Communications and Media Authority, answers to written questions on notice from Senator Grogan, 12 November 2024 (received 13 November 2024)
- 31 Australian Communications and Media Authority, written questions on notice from Senator Grogan, 12 November 2024 (received 14 November 2024)
- 32 Human Rights Law Centre, questions on notice, public hearing 11 October 2024 (received 12 November 2024)
- 33 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, answers to questions on notice 11 November 2024 (received 19 November 2024)
- 34 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, answers to written questions on notice from Senator Matthew Canavan , 13 November 2024 (received 19 November 2024)
- 35 Department of Home Affairs, answers to questions on notice 11 November 2024 (received 19 November 2024)

#### **Tabled Documents**

- 1 First Nations Peoples Aboriginal Corporation, Opening Statement (Tabled 11 October 2024)
- 2 Institute of Public Affairs, Opening Statement (Tabled 11 October 2024)
- 3 University of Technology Sydney Centre for Media Transition, Opening Statement (Tabled 11 October 2024)
- 4 Reset Tech, Opening Statement (Tabled 11 October 2024)
- 5 Australian Communications Consumer Action Network, Opening Statement (Tabled 11 October 2024)
- 6 Australian Human Rights Commission, Opening Statement (Tabled 17 October 2024)
- 7 eSaftey Commissioner, Opening Statement (Tabled 17 October 2024)
- 8 Digital Industry Group, Opening Statement (Tabled 17 October 2024)
- 9 CyberCX, Opening Statement (Tabled 17 October 2024)
- 10 Australian Christian Lobby, Opening Statement (Tabled 17 October 2024)
- 11 Public Interest Journalism Initiative, Opening Statement (Tabled 17 October 2024)
- 12 Community Broadcasting Association of Australia, Opening Statement (Tabled 11 October 2024)
- 13 Department of Home Affairs, Opening Statement (Tabled 11 November 2024)
- 14 Human Rights Law Council, Opening Statement (Tabled 11 November 2024)
- 15 Local and Independent News Association, Opening Statement (Tabled 11 November 2024)
- 16 Australian Jewish Association, Opening Statement (Tabled 11 November 2024)
- 17 Professor Anne Twomey AO, Opening Statement (Tabled 11 November 2024)
- 18 CitizenGO, Opening Statement, Public Hearing 11 November 2024.

- 19 National Emergency Management Agency, Opening Statement (Tabled 11 November 2024)
- 20 Australian Media Literacy Alliance, Opening Statement, Public Hearing 11 November 2024.
- 21 Senator Karen Grogan: 'Disinformation and misinformation campaigns - The Australian Campaign, The Army Research Centre' (Tabled 11 November 2024)
- 22 Senator Karen Grogan: 'ADF chief warns of 'truth decay' in talk touching on AI and disinformation - Defence Connect' (Tabled 11 November 2024)
- 23 Senator Karen Grogan: 'Addressing Hurricane Helene Rumours and Scams - FEMA' (Tabled 11 November 2024)



# Appendix 3

## Public Hearings and Witnesses

*Friday 11 October 2024*

Main Committee Room

1R0

Australian Parliament House

- Canberra

*Community Broadcasting Association of Australia (CBAA)*

- Mr Reece Kinnane, Head of Advocacy and Communications

*Free TV Australia*

- Ms Angela Flannery, Partner Quay Law Partners

*Nine Entertainment*

- Ms Larina Alick, Executive Counsel

*Reset Tech Australia*

- Miss Alice Dawkins, Executive Director

*Institute of Public Affairs*

- Mr Morgan Begg, Director of Research
- Mr Daniel Wild, Deputy Executive Director

*Digital Rights Watch*

- Ms Elizabeth O'Shea, Chair

*Australian Communications Consumer Action Network*

- Ms Carol Bennett, Chief Executive Officer
- Dr Gareth Downing, Deputy Chief Executive Officer

*Media Entertainment & Arts Alliance*

- Ms Karen Percy, Media Section President
- Mr Matt Byrne, Politics Lead

*First Nations Peoples Aboriginal Corporation and Specialist Board Member*

- Mr Daniel Willis, Chief Executive Officer

*Croakey Health Media*

- Professor Bronwyn Fredericks, Co-Chair
- Dr Melissa Sweet, Editor-in-Chief

*UTS Centre for Media Transition*

- Professor Monica Attard OAM, Co-Director
- Dr Michael Davis, Research Fellow

*Thursday 17 October 2024*

Committee Room 2S3

Australian Parliament House

- Canberra

*Digital Industry Group*

- Dr Jennifer Duxbury, Director of Policy Affairs and Research

*Uniting Church in Australia*

- Dr Mark Zirnsak, Senior Social Justice Advocate
- Reverend Associate Professor Robyn Whitaker, Faculty, Pilgrim Theological College

*Australian Christian Lobby*

- Mrs Michelle Pearse, Chief Executive Officer
- Mrs Elisabeth Taylor, Independent Researcher

*Australian Catholic Bishops Conference*

- Archbishop Peter A Comensoli, Chair, Bishops Commission for Life, Family and Public Engagement
- Mr Jeremy Stuparich, Deputy General Secretary

*Australian Electoral Commission*

- Mr Tom Rogers, Electoral Commissioner
- Mr Jeff Pope, Deputy Electoral Commissioner
- Mr Michael Lynch, First Assistant Commissioner, Electoral Integrity and Operations Group
- Mr Matthew Haigh, Assistant Commissioner, Electoral Integrity and Media Branch
- Mr Andrew Johnson, Chief Legal Officer

*Office of the e-Safety Commissioner*

- Ms Julie Inman Grant, Commissioner
- Mr Toby Dagg, General Manager of Regulatory Operations

*Australian Human Rights Commission*

- Mrs Lorraine Finlay, Human Rights Commissioner

*CyberCX*

- Mr Jordan Newnham, Executive Director Corporate Affairs

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*New South Wales Council for Civil Liberties*

- Mr Stephen Blanks, Treasurer and Former President
- Mr Timothy Roberts, Secretary

*Queensland Council for Civil Liberties*

- Mr Michael Cope, President

*News Corp Australia*

- Mr Campbell Reid, Group Executive Corporate Affairs, Policy & Government Relations

*Australian Broadcasting Corporation*

- Ms Amy Froome, Senior Lawyer, Regulatory & Commercial
- Dr David Sutton, Senior Strategist

*Special Broadcasting Service*

- Ms Clare O'Neil, Director of Corporate Affairs
- Mr Theo Dorizac, General Counsel

*Public Interest Journalism Initiative*

- Ms Anna Draffin, Chief Executive Officer
- Mr Simon Harari, Head of Strategy and Policy

*Dr Nicholas Coatsworth, Private capacity*

*Monday 11 November 2024*

Committee Room 2S3

Australian Parliament House

- Canberra

*Human Rights Law Centre*

- Mr David Mejia-Canales, Senior Lawyer

*Victorian Bar*

- Mr James McComish, Barrister, Member of the Victorian Bar's Communications Legislation Amendment Working Group

*Professor Anne Twomey AO, Private capacity*

*Australian Jewish Association*

- Mr Robert Gregory, Chief Executive Officer
- Dr David Adler, President

*National Emergency Management Agency*

- Mr Joel Buffone, Deputy Coordinator-General

*CitizenGO*

- Mr Brian Marlow, Australian Campaigner

*Australian Muslim Advocacy Network*

- Ms Rita Jabri Markwell, Legal Advisor

*Australian Media Literacy Alliance*

- Ms Anita Planchon, Chair
- Mrs Christine Evely, Deputy Chair
- Dr Michael Dezuanni, Committee Member

*Local and Independent News Association*

- Ms Claire Stuchbery, Executive Director

*Department of Home Affairs*

- Ms Jeni Whalan, First Assistant Secretary – Office of Community Cohesion, via videoconference
- Mr David Chick, Assistant Secretary – Counter Foreign Interference Policy and Coordination
- Mr Alexander Goldie, Assistant Secretary – Countering Violent Extremism

*Department of Infrastructure, Transport, Regional Development, Communications and the Arts*

- Mr James Chisholm, Deputy Secretary
- Ms Sarah Vandenbroek, First Assistant Secretary – Digital Platforms, Safety and Classification Division
- Mr Andrew Hyles, Assistant Secretary – Digital Platforms, International and Policy Branch
- Mr Sam Kursar, Director – Digital Platforms, International and Policy Branch

*Australian Communications and Media Authority*

- Ms Creina Chapman, Deputy Chair
- Ms Autumn Field, General Manager, Content
- Ms Rochelle Zurnamer, Executive Manager, Misinformation and Disinformation
- Ms Kelly Mudford, Manager, Disinformation and Platforms