



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

Online misinformation and disinformation reform

Impact Analysis

September 2024



© Commonwealth of Australia 2024

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

Creative Commons licence

With the exception of: (a) the Coat of Arms; and (b) the Department of Infrastructure, Transport, Regional Development, Communications and the Arts photos and graphics, copyright in this publication is licensed under a Creative Commons Attribution 4.0 Australia Licence.

Creative Commons Attribution 4.0 Australia Licence is a standard form licence agreement that allows you to copy, communicate and adapt this publication provided that you attribute the work to the Commonwealth and abide by the other licence terms.

Further information on the licence terms is available from <https://creativecommons.org/licenses/by/4.0/>. This publication should be attributed in the following way: © Commonwealth of Australia 2024.

Use of the Coat of Arms

The Department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Commonwealth Coat of Arms—Information and Guidelines publication available at <http://www.pmc.gov.au>.

Contact us

This publication is available in hard copy or PDF format. All other rights are reserved, including in relation to any departmental logos or trademarks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Director – Publishing and Communications

Communication Branch

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

GPO Box 594

Canberra ACT 2601

Australia

Email: publishing@communications.gov.au

Website: www.infrastructure.gov.au | www.arts.gov.au

Table of Contents

| | |
|--|-----------|
| Executive summary | 7 |
| Introduction | 7 |
| Why misinformation and disinformation are a problem | 7 |
| Need for government action | 8 |
| Objectives of the reform | 8 |
| Options considered | 8 |
| Impact analysis | 8 |
| Break-even analysis | 9 |
| Willingness to pay | 9 |
| Consultation | 9 |
| 2023 Exposure Draft Bill consultation process | 10 |
| 2024 targeted consultation process | 10 |
| The preferred option | 10 |
| Implementation and evaluation | 11 |
| Background | 12 |
| What is the problem? | 13 |
| Online misinformation and disinformation may cause serious societal harms | 13 |
| Types of harm | 14 |
| Examples of misinformation and disinformation | 15 |
| Misinformation and disinformation during the COVID-19 pandemic | 15 |
| Misinformation and disinformation during elections | 15 |
| Foreign interference through disinformation | 16 |
| Concerns about disinformation in the European Union | 18 |
| The current voluntary industry efforts in Australia are a good start but are not sufficient to address the problem | 18 |
| Transparency reporting under the voluntary code is inconsistent | 18 |
| There is not enough direct transparency with Australian online users | 20 |
| The voluntary code is limited in its efficacy by its voluntary nature | 20 |
| Why is Government action needed? | 22 |
| Market failure | 22 |
| Role of government | 22 |
| Government's capacity to intervene | 22 |
| Objectives of the reform | 23 |
| Policy options considered | 25 |
| Full range of options considered | 25 |
| Assessment of the options | 26 |
| Short list of options | 26 |
| Who the reform would apply to | 27 |
| Option 1 – Maintain the status quo (voluntary code only) | 29 |

| | |
|---|-----------|
| Option 2 – Provide the ACMA with information gathering, code registration and standard making powers (as per the Exposure Draft Bill) | 29 |
| Record keeping rules | 29 |
| Information gathering | 30 |
| Publication | 30 |
| Codes, standards and general provisions | 30 |
| Codes of Practice | 32 |
| Standards | 33 |
| Enforcement | 34 |
| Option 3 – Provide the ACMA with information, code registration and standard making powers, and new core transparency obligations | 35 |
| Policies | 35 |
| Risk assessment | 35 |
| Risk management | 35 |
| Media literacy plan | 35 |
| Complaints handling and dispute resolution | 35 |
| Publication obligations | 36 |
| Exemption from core transparency obligations | 37 |
| Impact analysis | 38 |
| Stakeholders identified and considered in the analysis | 38 |
| Government costs estimation | 38 |
| Industry cost estimation | 38 |
| Option 1 – Maintain the status quo | 39 |
| Option 2 – Provide the ACMA with information, code registration and standard making powers (as per Exposure Draft Bill) | 39 |
| Option 3 – Provide the ACMA with information, code registration and standard making powers, and provide core obligations on platforms | 39 |
| Benefit identification | 41 |
| Benefit valuation approach | 42 |
| Timing of costs and benefits | 43 |
| Benefit discussion and break-even analysis | 44 |
| Alternative approach – Willingness to pay | 51 |
| Results | 52 |
| Break-even analysis | 52 |
| Willingness to pay | 53 |
| Sensitivity analysis | 53 |
| Distribution analysis | 53 |
| Regulatory burden | 54 |
| Consultation | 55 |
| Further consultation | 56 |
| Key concerns in the consultation | 56 |
| The preferred option | 57 |

| | |
|--|-----------|
| Identifying the preferred option | 57 |
| Option 1 | 57 |
| Option 2 | 57 |
| Option 3 | 57 |
| The preferred option | 57 |
| Implementation and evaluation | 58 |
| Barriers and risks | 58 |
| Potential of ‘over-censorship’ | 59 |
| Implementation risks | 59 |
| Commencement timings | 59 |
| Planned implementation process and timing | 60 |
| Governance arrangements | 60 |
| Transitional issues and provisions | 60 |
| Evaluation process and timings | 61 |
| Objectives of evaluation | 61 |
| How evaluation will occur | 61 |
| Annex A: Businesses impacted | 63 |
| Annex B: Industry cost calculations | 64 |
| Industry salary costs | 64 |
| Option 2 | 64 |
| Option 3 | 65 |

List of Figures and Tables

| | |
|---|----|
| Table 1: Example of alleged false content identification problem | 20 |
| Figure 1: Suggested program logic mapping the reform outputs to the desired outcomes (reduced or avoided harms) | 24 |
| Table 2: Full range of options considered to achieve the reform objectives | 25 |
| Table 3: Summary of the options considered in detail | 27 |
| Table 4: Graduated enforcement methods | 34 |
| Table 5: Option 1 Regulatory costs | 39 |
| Table 6: Option 2 Initial Regulatory Costs | 39 |
| Table 7: Option 3 Industry costs | 41 |
| Table 8: Benefits (in the form of avoided harms) that would arise from the reforms | 42 |
| Table 9: Benefit categories with description and possible valuation approach | 43 |
| Figure 2: Graph of net benefits for each option to account for timings | 44 |
| Table 10: Summary of key cancer screening programs | 44 |
| Table 11: Previous estimate of the benefits of cancer screening programs | 45 |
| Table 12: Break-even analysis for changes in participation in cancer screening programs | 45 |
| Table 13: Break-even analysis for hatred towards groups | 46 |
| Table 14: Break-even analysis for physical injury to individuals | 48 |

| | |
|--|----|
| Table 15: Published estimates of election costs | 49 |
| Table 16: Break even analysis of the decrease in risk of election re-run to offset costs of reform | 50 |
| Figure 3: Estimated global harm arising annually from misinformation and disinformation | 51 |
| Table 17: Required willingness to pay of Australian adults per year | 52 |
| Table 18: Qualitative analysis of the costs and benefits | 53 |
| Table 19: Average annual regulatory costs (from business as usual) | 54 |
| Table 20: Key concerns and themes from the public consultation in 2023 | 56 |
| Figure 4: Likelihood and consequence risk rating matrix | 58 |
| Table 21: Strategies to mitigate and manage each of the risk categories | 59 |
| Table 21: Planned commencement schedule | 60 |
| Figure 5: Evaluation as part of the policy cycle | 62 |
| Table 23: Option 2 Regulatory cost estimates based on activity-based costing | 64 |
| Table 24: Option 3 Regulatory cost estimates based on activity-based costing | 65 |

Executive summary

Introduction

The rapid spread of seriously harmful misinformation and disinformation poses a major challenge to the proper functioning of societies across the world. In democratic countries such as Australia which rely on the free flow of information to inform public debate, the integrity, diversity and reliability of information is fundamental to our democratic way of life.

Why misinformation and disinformation are a problem

The Australian Electoral Commission has defined misinformation as false information that is spread due to ignorance, or by error or mistake, without the intent to deceive. They have defined disinformation as knowingly false information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes.¹

A key distinguishing feature between misinformation and disinformation is intent. Disinformation is intended to capture 'misinformation that has been disseminated with the intention of deceiving another person', while misinformation could be spread innocently due to ignorance, error or mistake.

Australians are increasingly relying on social media as a source of news – the 2024 Digital News Report, undertaken by the University of Canberra, found that while television was still the most popular news source (56 percent), this was declining and the use of social media as a news source had jumped to 49 percent.

In developing and assessing reform options, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA or the Department) identified a range of types of serious harms that can result from misinformation and disinformation:

Electoral processes: Harm to the operation or integrity of a Commonwealth, State, Territory or local government electoral or referendum process.

Health of Australians: Harm to health outcomes in Australia, including reductions in the effectiveness of preventative health programs.

Hatred towards groups: The vilification of a minority group in Australian society on the basis of race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin. This also covers the vilification of an individual because of a belief that individual holds as a member of such a group.

Physical injury to individuals: Intentionally inflicted physical injury to an individual in Australia, regardless of whether the individual is a member of one of the groups above.

Critical infrastructure or emergency services: Damage to critical infrastructure or emergency services in Australia. This includes utilities, transport, police, fire, ambulance and border protection services.

Economic harm: Harm to sectors of the Australian economy, including harm to public confidence in the banking system or financial markets.

¹ Electoral Integrity Assurance Taskforce, *Disinformation and Misinformation* (Factsheet) <https://www.aec.gov.au/About_AEC/files/eiat/eiat-disinformation-factsheet.pdf>.

Need for government action

The need for policy intervention on misinformation and disinformation arises because a number of social costs associated with misinformation and disinformation are inadequately considered by digital communications platform providers and the producers of misinformation and disinformation. As a consequence, these costs are borne by society. This is an example of a market failure.²

Market failures are an important consideration when assessing the case for government intervention.

Objectives of the reform

The reforms aim to require digital communication platform providers take responsibility for improving the online information environment. It does this by:

- empowering the Australian Communications and Media Authority (ACMA) to require digital communications platform providers to take measures to manage the risk that misinformation and disinformation on digital communications platforms poses in Australia
- increasing transparency regarding the way in which digital communications platform providers manage misinformation and disinformation on digital communications platforms
- empowering users of digital communications platforms to identify and respond to misinformation and disinformation on digital communications platforms.

Options considered

The Department identified a range of voluntary and co-regulatory approaches to address this problem. This included:

- Voluntary industry efforts and initiatives by governments and other organisations
- Co-regulatory options – where industry develops a code, but government enforces it
- Legislative options.

As there is an existing voluntary code that has not fully addressed the problem, concerns were raised during the public consultation process that voluntary options would not be effective in overcoming the problem. In particular, the current voluntary code is not endorsed by all platforms and has limited ability to hold non-signatories to account – which reduces its effectiveness and can create an uneven playing field, particularly if consumers are unaware of the voluntary code or where platforms have not adopted it.

Based on this assessment, the short list of options to be considered in detail are:

1. Maintain the current arrangements (the base case)
2. Introduction of legislative powers that can be applied in a graduated approach (as per the Exposure Draft Bill)
3. Introduction of legislative powers that can be applied in a graduated approach as well as core transparency obligations.

Impact analysis

An economic analysis was used to compare the shortlisted reform options (Option 2 and Option 3) against the base case (Option 1). The economic analysis seeks to consider the full range of advantages and disadvantages of each of the options including financial, social and environmental impacts.

² Market failure is a concept in economic theory in which the allocation of goods and resources by existing (or free) markets is not efficient. Where there is market failure, markets will not achieve the best outcomes for the community. Market failure can result from five general factors: public good, externalities, lack of property rights, asymmetric information, and split incentives.

The economic analysis used two approaches to demonstrate that, while the benefits of the proposed reforms are difficult to estimate quantitatively, they are expected to outweigh the costs significantly. Both the approaches used align with Office of Impact Analysis guidance on cost benefit analysis.³ The two approaches used are:

- The first approach used was a break-even analysis. This approach is used for this reform as the type and value of the benefits can be identified – but the scale and frequency of the benefits is hard to estimate accurately
- The second approach used is to compare the quantified costs of the project with surveys of members of the public's *Willingness To Pay* for reduced levels of misinformation and disinformation.

Break-even analysis

While the economic analysis has focussed on a fraction of the benefits that would arise if the reforms were effective, the break-even analysis clearly demonstrates that the value of the avoided harms would outweigh the costs. The analysis identified that only a small improvement in just one individual from harm is necessary to offset the costs of the entire reform.

Given the small changes in avoided harms for both Option 2 and Option 3, **Option 3 is the preferred option.**

Option 3 provides the ACMA with a more active role in encouraging transparency on misinformation and disinformation and imposes more obligations on digital communication platforms. While this results in higher costs, it is more likely to be effective in achieving the reform objectives and so therefore appears likely to deliver the largest net benefit – making it the preferred Option.

Willingness to pay

Two recent *Willingness to Pay* (WTP) studies clearly demonstrated that the community in each country surveyed is willing to pay significantly more than the required annual cost of the proposed reforms. Based on the analysis, Australians' WTP for a reduction in misinformation and disinformation would be great enough to ensure that the benefits of the legislation outweigh the cost.

Option 3 provides the ACMA with a more active role in encouraging transparency on misinformation and disinformation and imposes more obligations on digital communication platforms. While this results in higher costs, it is more likely to be effective in achieving the reform objectives and so therefore appears likely to deliver the largest net benefit – making it the preferred Option.

Consultation

The Department has undertaken two phases of public and targeted consultation on the Exposure Draft Bill over 2023 and 2024:

- **Public consultation:** on 25 June 2023, the Commonwealth Government released the Exposure Draft of the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*. The Department held targeted stakeholder roundtables with the digital communications platforms industry, civil rights groups, academia, religious organisations, and the media and broadcasting sectors.⁴ Several stakeholder roundtable sessions were held during the eight-week consultation period.

³ Office of Impact Analysis (Aust), 'Cost Benefit Analysis' (Guidance Note, July 2023) <<https://oia.pmc.gov.au/sites/default/files/2023-08/cost-benefit-analysis.pdf>>.

⁴ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Aust), 'New ACMA powers to combat misinformation and disinformation' (Web Page, 24 June 2023) <<https://www.infrastructure.gov.au/have-your-say/new-acma-powers-combat-misinformation-and-disinformation>>.

- **Targeted consultation:** in April and July 2024, the Department commenced targeted consultation with key industry and other stakeholders on potential changes to the Exposure Draft Bill following feedback from the public consultation process last year.

2023 Exposure Draft Bill consultation process

The Department received over 24,000 responses, including 2,418 public submissions. Although key industry submissions acknowledged that action was needed to protect Australians from seriously harmful misinformation and disinformation, a number of concerns about the proposed framework were raised.

The following primary concerns emerged from the public consultation process on the Exposure Draft Bill:

- **freedom of expression and religious freedom** – stakeholders were concerned that the powers would unduly restrict Australians’ implied right to freedom of political communication and ‘cancel’ religious content online.
- **government overreach and censorship** – stakeholders were concerned that the Government would censor Australians who held contrary views.
- **transparency and oversight** – stakeholders were concerned 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. There were also concerns raised about how the ACMA would make decisions in exercising the powers.
- **workability for platforms** – the digital communications platform industry held concerns about how they would be able to comply with the powers, particularly with regards to the definitions in the Bill.

2024 targeted consultation process

Following the outcome of the public consultation process, the Department undertook a detailed assessment of feedback and considered potential revisions that could be made to the Exposure Draft Bill. The Department conducted further targeted consultation with key stakeholders on the potential set of changes to the Exposure Draft Bill, including:

- narrowing the scope of harms in order to better protect freedom of speech and religious expression
- refining provisions regarding platform transparency and accountability requirements
- 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.

The feedback from the sessions has been generally positive, particularly with regard to amendments providing better protections for freedom of speech and public interest debate and narrowing the scope of the definitions in the Bill including misinformation and disinformation.

Most of the stakeholders expressed a strong interest in seeing the text of the revised Bill in order to enable them to review the changes in detail and provide more substantive comments. A revised Bill was provided to stakeholders in July 2024. Several stakeholders questioned how certain provisions of the Bill would operate. In response, key specific explanations have been included in the Explanatory Memorandum to the Bill which was not available for consultation at the time.

The preferred option

Based on the analysis outlined further in this Impact Analysis, the **recommended outcome is that reform Option 3 be implemented**. This Option would provide the ACMA with information powers, code registration and standard making powers, and place new core obligations on platforms to boost transparency and increase user empowerment. The total per year cost on industry of the preferred Option is estimated to be **\$16,275,000**.

For further information, see the below sections and Annexes A and B.

Implementation and evaluation

The potential risks associated with implementation include opposition from some sectors of the industry and the complexity of implementing effective regulations in a rapidly evolving technological landscape. The possibility of industry opposition exists, given concerns about additional regulatory burdens and operational flexibility. The consequences could involve resistance to compliance, affecting the success of the reforms.

To mitigate industry concerns, the ACMA has, and will, employ a collaborative approach, engaging in regular and transparent communication to address concerns constructively.

The ACMA will monitor and evaluate the implementation of the regulatory reforms to ensure it aligns with the objectives and gauge its effectiveness. This evaluation will be an integral part of the ACMA's ongoing regulatory reform, monitoring and compliance activities.

The proposed legislative reforms include a review that will be undertaken three years after the legislation's commencement. The review will be required to take special consideration of the framework's impact on freedom of speech.

Background

In December 2017, the Commonwealth Government directed the Australian Competition and Consumer Commission (ACCC) to consider the impact of online search engines, social media and digital content aggregators on competition in the media and advertising services market. The resulting Digital Communications Platforms Inquiry (DPI) assessed a number of market issues that had been impacted by the rise of digital communications platforms. The DPI paid particular attention to the impacts of the two largest platform providers, Google and Facebook (now called Meta).

The final DPI report⁵, published in July 2019, made 23 recommendations, one of which was that the digital communications platforms in Australia develop a voluntary code of practice to address online disinformation.

*The Australian Code of Practice on Disinformation and Misinformation*⁶ (the voluntary code) was launched by Digital Industry Group Inc. (DIGI) in February 2021. The voluntary code currently has nine signatories: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok, Twitch and Legitimate. A number of other major digital communications platforms are not signatories to the voluntary code.

The ACMA was tasked with overseeing the development and reporting to the Government on the adequacy of platform measures and the broader impacts of disinformation. In July 2021, the ACMA released *A report to government on the adequacy of digital communications platforms' disinformation and news quality measures*⁷. The report identified that although the creation of an industry code was a meaningful first step, there was a need for further improvements to the scope and clarity of the voluntary code.

The ACMA's report also recommended that the ACMA be given information gathering powers, powers to create record keeping rules, reserve powers to register an industry code of practice, and reserve powers to create an industry standard⁸. The report and its recommendations were accepted in full by the Commonwealth Government in March 2022. Following the 2022 Federal Election, the newly elected Government committed to introducing legislation to provide the ACMA with new powers to combat online misinformation and disinformation.

The signatory status of X (formerly Twitter) was withdrawn in November 2023 by the voluntary code's independent Complaints Sub-Committee following X's refusal to take remedial action or cooperate in an investigation into a complaint about X closing, and leaving closed, accessible channels for the public to report misinformation and disinformation on the platform during the Australian Voice to Parliament referendum.

An independent assessment of the 2024 annual transparency reports from the voluntary code signatories also raised concerns about the lack of 'trended data and associated commentary' specific to the Australian context and noted that recent improvements in the quality of the reports had stalled compared to previous years.⁹

⁵ Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Final Report, June 2019).

⁶ Digital Industry Group, *Australian Code of Practice on Disinformation and Misinformation* (Industry Code of Practice, 22 February 2021).

⁷ Australian Communications and Media Authority, *A Report to Government on the Adequacy of Digital Platforms' disinformation and news quality measures* (Report, June 2021).

⁸ Ibid 5.

⁹ DIGI, *Australian Code of Practice on Disinformation and Misinformation: Annual Report* (31 May 2024) <<https://digi.org.au/wp-content/uploads/2024/05/ACPDM-Annual-Report-May-2024-FINAL.pdf>> 9.

What is the problem?

Online misinformation and disinformation may cause serious societal harms

The rapid spread of misinformation and disinformation can cause serious harm to society. For example, misinformation and disinformation can create divisions within communities, undermine public trust, and threaten people's health and safety as a result. Although the spread of misinformation and disinformation is not a new problem, digital communications platforms have enabled seriously harmful content to be distributed further and faster than previously possible.

The Australian Electoral Commission defines misinformation and disinformation as follows¹⁰:

Misinformation is false information that is spread due to ignorance, or by error or mistake, without the intent to deceive.

Disinformation is knowingly false information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes.

The key distinguishing feature between misinformation and disinformation is intent. Disinformation is intended to capture 'misinformation that has been disseminated with the intention of deceiving another person', while misinformation could be spread innocently due to ignorance, error or mistake.

Misinformation and disinformation can be propagated by governments, state backed entities, extremist groups and individuals for a range of reasons. For example, foreign governments and other hired actors have attempted to target voting cohorts and influence elections across the world through the spread of disinformation online.

There is substantial evidence from Australia and overseas of the serious harms that can be caused by misinformation and disinformation as Australians are increasingly relying on social media as a source of news. The 2024 Digital News Report, undertaken by the University of Canberra, found that while television was still the most popular news source (56 percent), this was declining and the use of social media as news source had jumped to 49 percent.¹¹ This rise in use of social media as a source for news was accompanied by a rise in the concern Australians had about misinformation. The survey found that 57 percent of respondents had concerns – up 11 percent from 2022.

In May 2024, each signatory of the voluntary DIGI code released their 2023 annual transparency report, outlining their efforts to tackle misinformation in Australia. Some examples of misinformation reported in 2023 through these reports included:

- Meta – displayed warnings on 9.2 million pieces of content on Facebook and over 510,000 on Instagram in Australia based on articles written by its third-party factchecking partners.
- Google – removed over 140,000 YouTube videos in Australia that violated its community guidelines and over 20,000 YouTube videos in Australia were removed for violating misinformation or spam, misleading and scams policies.

¹⁰ Electoral Integrity Assurance Taskforce, *Disinformation and Misinformation* (Factsheet) <https://www.aec.gov.au/About_AEC/files/eiat/eiat-disinformation-factsheet.pdf>.

¹¹ Kelly White, 'Digital News Report: Australia 2024: AI, social media, misinformation and distrust – what the data tells us about the news landscape in 2024. (University of Canberra Web Page, June 2024) <<https://www.canberra.edu.au/about-uc/media/newsroom/2024/june/digital-news-report-australia-2024-ai,-social-media,-misinformation-and-distrust-what-the-data-tells-us-about-the-news-landscape-in-2024>>.

- TikTok – removed about 29,000 videos in Australia for violating its harmful misinformation policies.

Misinformation and disinformation pose serious risk of economic and social disruption to Australia and Australians. For example:

- The Australian mobile telecommunications industry reported spending \$3.1 million in 2019 and \$7.9 million in 2020 as a direct result of misinformation about 5G and electromagnetic energy¹², most of that spending was required to repair and replace vandalised property.
- The April 2024 stabbing attack in Bondi Junction also revealed misinformation to be a threat to Australians, with misinformation and disinformation spreading rapidly across social media claiming particular religious or ethnic groups or individuals were responsible for the attack.

In preparation of this Impact Analysis, it was difficult to obtain Australia-specific information about misinformation and disinformation from digital communications platform providers. This issue has been highlighted by the ACMA in its two reports to government on the operation of the voluntary industry code. These reports (detailed further below) highlight a lack of trended and inconsistent data reporting by digital communications platforms that have made long term trend assessment and analysis of the harms and impacts of misinformation and disinformation difficult.

While there has been a range of research into misinformation and its effects, particularly since COVID-19, research projects into misinformation and disinformation can tend to be limited in their findings as a result of small sample sizes.

Despite the difficulty in undertaking quantitative long-term trend analysis of the harms and impacts of misinformation and disinformation on digital communications platforms, research has been conducted on specific impact events. Examples of these are outlined below.

Types of harm

In developing and assessing the reform options, the Department identified various types of serious harm impacting Australians:

Electoral processes: Harm to the operation or integrity of a Commonwealth, State, Territory or local government electoral or referendum process.

Health of Australians: Harm to health outcomes in Australia, including reductions in the effectiveness of preventative health programs in Australia.

Hatred towards groups: The vilification of a minority group in Australian society on the basis of race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin. This also covers the vilification of an individual because of a belief that individual holds as a member of such a group.

Physical injury to individuals: Intentionally inflicted physical injury to an individual in Australia, regardless of whether the individual is a member of one of the groups above.

Critical infrastructure or emergency services: Damage to critical infrastructure or disruption of emergency services in Australia. This includes utilities, transport, police, fire, ambulance and border protection services.

Economic harm: Harm to sectors of the Australian economy, including harm to public confidence in the banking system or financial markets.

These are the types of societal harms that can 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.

¹² Australian Communications and Media Authority, *ACMA Misinformation Report – Fact Sheet 1: key research findings* (2022), 2.

These types of harms are expanded upon and valued in the impact analysis – aligning with question four of the seven Impact Analysis questions. Many of these harms would fall to an individual or a group within the community. However, some of the harms impact governments (Commonwealth, State and Local Government) and businesses – such as owners of infrastructure as well as banking and financial markets.

Examples of misinformation and disinformation

Some specific examples of harm from misinformation and disinformation that have arisen in the last few years are included below.

Misinformation and disinformation during the COVID-19 pandemic

The COVID-19 pandemic brought the issue of misinformation and disinformation into the spotlight, with much research and analysis being undertaken on how social media influenced and amplified various health related claims from alternate cures to misinformation spread about vaccination efforts and rates.

One review of the impact of fake news during COVID-19 evaluated 14 studies, conducted in 14 countries, involving 571,729 participants. This review found serious harm had occurred as a result of COVID-19 related misinformation¹³. Cases included hydroxychloroquine overdoses in Nigeria, drug shortages, changing treatment of patients with rheumatic and autoimmune diseases, and panic over supplies and fuel.

In one example the report investigated, a popular myth in Iran suggested that consumption of pure alcohol (methanol) could eliminate the virus. This claim resulted in 800 deaths and 5,876 hospitalisations due to methanol poisoning. The report also highlights the diverse impact of fake news on mental health, the varied susceptibility across age groups, and the significant role of social media platforms in spreading misinformation during the pandemic.

Another study looked at how exposure to online misinformation on COVID-19 vaccines affected intent to vaccinate through a randomised controlled trial in the UK and US¹⁴.

- A total of 8,001 respondents in the UK and 4,001 in the US were recruited for the study. Following randomised treatment assignment, 3,000 UK and 3,001 US respondents were exposed to misinformation related to COVID-19 and vaccines (treatment group). A control group of 1,000 in each country were shown factual information about COVID-19 vaccines.
- Before treatment, 54.1 percent (95% percentile interval (PI) 52.5 to 55.7) of respondents in the UK and 42.5% (95% PI 41.0 to 44.1) in the US reported that they would 'definitely' accept a COVID-19 vaccine to protect themselves; whereas 6.0 percent (95% PI 5.3 to 6.8) and 15.0% (95% PI 14.0 to 16.1) said they would 'definitely not' accept a COVID-19 vaccine. The remaining respondents were 'unsure' about whether they would accept a COVID-19 vaccine.
- The study showed that, as of September 2020, fewer people would definitely take a vaccine than is required for herd immunity, and that recent misinformation induced a decline in intent of 6.2 percentage points in the UK and 6.4 percentage points in the US among those who stated that they would definitely accept a vaccine.

Misinformation and disinformation during elections

Misinformation about Australian election and referendum processes has been disseminated across social media, including concerning the 2022 Federal Election and the 2023 Constitutional Recognition Referendum. To date, its impact has generally been quite low, and the Australian Electoral Commission (AEC) has had some

¹³ Yasmin Mendes Rocha et al, 'The impact of fake news on social media and its influence on health during the COVID-19 pandemic: a systematic review' (2021) (31) *Journal of Public Health* 1007-1016, 1014.

¹⁴ Sahil Loomba et al. 'Measuring the impact of COVID-19 vaccine misinformation on vaccination intent in the UK and USA' (2021) (5) *Nature Human Behaviour* 337-348.

success in countering incorrect claims about the election process which has helped to mitigate the spread of misinformation during election processes.

Misleading and incorrect claims made of Australian elections and referendums include:

- claims ballot papers for the 2022 Federal Election were found near bins in Port Macquarie with an image seeking support to raise the issue with media. It was determined that half the ballots in the image were not AEC-issued (believed to be photocopies and in the wrong shade of green), with the claim quickly investigated by the AEC, a notice posted by the AEC on social media and the post deleted.¹⁵
- claims the AEC outsourced counting for the 2022 Federal Election and was using compromised vote counting software were spread across Facebook, X and Telegram. These claims were corrected by the AEC with a video explaining how votes were counted.¹⁶
- claims postal votes are an unsafe voting method and could lead to the 'AEC rigging the election', with comparisons drawn to claims made during the 2020 US Presidential election. These were spread also on the same platforms and the AEC responded to numerous posts providing a link to show the process undertaken at counting centres.¹⁷
- claims the provision of pencils at polling places by the AEC were part of a plan to allow AEC officers to erase and change votes. These were again spread across the same platforms above, with the AEC social media team working to correct these claims by responding within comments and through the use of an explainer video.¹⁸

Artificial intelligence (AI) has the potential to disseminate information at unprecedented speed and scale. AI tools can be used to supercharge misinformation and disinformation efforts by generating persuasive propaganda or augmenting and streamlining existing human propaganda efforts at low cost and extreme efficiency. False or misleading narratives could also be complemented or enhanced by deepfakes through visual or audio media.

43 percent of Australians listed election interference as a key concern when it comes to the impact of AI-powered technology, according to research published in April 2024. Multiple respondents to the government's Safe and Responsible AI consultations in 2023 identified electoral integrity as a key concern.

While disinformation campaigns are yet to seriously disrupt Australian elections, during the 2020 US election there was a concerted effort to create and spread a false narrative about widespread voter fraud. This eroded trust in the election process and substantially contributed to the violent events at the US Capitol on 6 January 2021.¹⁹

Foreign interference through disinformation

Disinformation by foreign actors is not a new phenomenon; online disinformation campaigns have become a particular vector for foreign interference in recent years. Although this is not a unique threat to Australia, the threat is a real one.

In 2023, then Chief of Defence, General Angus Campbell, noted countries such as Russia had readily 'wielded disinformation as a weapon of statecraft' through the 'use of novel technologies to enhance the scale, speed

¹⁵ Australian Electoral Commission, *Disinformation Register 2022 Federal Election* (Web Page, 2022) <<https://www.aec.gov.au/media/disinformation-register-2022.htm>>.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Kate Starbird, Renee DiResta and Matt DeButts, 'Influence and Improvisation: Participatory Disinformation during the 2020 US Election' (2023) 9(2) *Social Media + Society*.

and spread of their efforts.’ General Campbell warned disinformation operations could ‘fracture and fragment entire societies so that they no longer possessed the collective will to resist an adversary’s intentions.’²⁰

Australia has not yet been subject to a large-scale foreign disinformation campaign, however without proactive steps to build resilience into Australia’s information environment, it will remain vulnerable. The following publicly reported examples are just two that highlight western democracy’s current exposure.

In October 2023, Canada’s Rapid Response Mechanism (RRM Canada) reported it had detected an information operation on social media targeting Canadian Members of Parliament and connected to the **Spamouflage (aka DRAGONBRIDGE)** network.²¹ RRM Canada further noted that Spamouflage had been publicly reported on by technology companies and threat intelligence experts, which had connected the activity to the People’s Republic of China (PRC).

Other reported instances of Spamouflage-type activity include:

- media reports on the use of AI imagery to drive wedges in Western political debates, particularly around Israel-Hamas and Russia-Ukraine conflicts, and to promote anti-US sentiment abroad.²²
- allegations of coordinated online harassment of high-profile Asian women critical of the Chinese Communist Party, reportedly including threats, wishes of harm and crude, offensive imagery which can be highly sexualised.
- reports of online campaigns attempting to convince policy makers to allow Huawei to operate in Western markets,²³ and attacks on rare earth mineral companies said to pose a threat to the PRC’s dominance in the market.²⁴

The issue will need to be monitored closely as it has the potential to scale and become more sophisticated. In particular, the evolving sophistication of AI and the use of AI by malign actors to spread misinformation and disinformation in democratic societies is a major concern for western democracies.

Russian interference in foreign elections has also been widely discussed and reported on, particularly regarding the 2016 US election.

- Research conducted after this election found confidence in US democracy had fallen (a National Public Radio (NPR) survey found 64 percent of respondents believed US democracy to be in crisis).²⁵
- It has been estimated that content pushed out by the Saint-Petersburg based Internet Research Agency (IRA), believed to be responsible for a major 2016 election disinformation campaign, produced content that reached at least 126 million people on Facebook, 20 million Instagram users and 1.4 million Twitter users. False news and disinformation campaigns also contributed to doubt and mistrust in online information, with some polling finding that a substantial portion (42 percent) of Americans had reduced their information-seeking and were consuming less news.²⁶
- While Russian interference has not yet been found to reach Australian elections, Russia and other foreign state actors have shown that, where they have interest, they have the ability and resources to

²⁰ General Angus Campbell, ‘Disruption and Deterrence’ (Speech, 2023 ASPI Conference, 14 September 2023) 9 <<https://www.aspi.org.au/wp-content/uploads/2023/09/Address-by-General-Angus-J-Campbell-AO-DSC-to-the-2023-ASPI-Disruption-and-Deterrence-Conference-14-Sep-2023.pdf>>.

²¹ ‘Probable PRC “Spamouflage” campaign targets dozens of Canadian Members of Parliament in disinformation campaign’, *Government of Canada* (Forum Post, 23 October 2023), <<https://www.international.gc.ca/transparency-transparence/rapid-response-mechanism-mecanisme-reponse-rapide/2023-spamouflage.aspx?lang=eng>>.

²² Elise Thomas, ‘Pro-CCP network ‘Spamouflage’ weaponizes Gaza conflict to spread anti-US sentiment’, *Institute for Strategic Dialogue* (Forum Post, 15 December 2023) <https://www.isdglobal.org/digital_dispatches/pro-ccp-network-spamouflage-weaponizes-gaza-conflict-to-spread-anti-us-sentiment/>.

²³ Laurens Cerulus, ‘Fake websites found peddling pro-Huawei content’, *Politico* (Forum Post, 24 February 2021) <<https://www.politico.eu/article/pro-huawei-astroturfing-campaign-falls-flat/>>.

²⁴ ‘Pro-PRC DRAGONBRIDGE Influence Campaign Targets Rare Earths Mining Companies in Attempt to Thwart Rivalry to PRC Market Dominance’, *Mandiant Threat Intelligence* (Blog Post, 28 June 2022) <<https://cloud.google.com/blog/topics/threat-intelligence/dragonbridge-targets-rare-earths-mining-companies/>>.

²⁵ Gabriel, R. Sanchez, and Keesha Middlemass, ‘Misinformation is eroding the public’s confidence in democracy’ *Brookings* (Forum Post, 26 July 2022) <<https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/>>.

²⁶ Spencer McKay and Chris Tenove, ‘Disinformation as a Threat to Deliberative Democracy’, (2020). 74(3) *Political Research Quarterly* 703-717.

manipulate public opinion and influence elections through misinformation. There is a real risk Australia could be targeted in future.

Concerns about disinformation in the European Union

The European Union has commenced formal proceedings against X regarding concerns about illegal content and disinformation on its service. In addition, the EU has formally raised its concerns with X and Meta over the rapid proliferation of disinformation on their services in the EU about the Hamas-Israel conflict.

On 30 April 2024, the EU commenced formal legal proceedings to assess whether Meta, the provider of Facebook and Instagram, may have breached the Digital Services Act (DSA). The EU alleges that Meta has not complied with obligations related to addressing the dissemination of deceptive advertisements, disinformation campaigns and coordinated inauthentic behaviour.

The current voluntary industry efforts in Australia are a good start but are not sufficient to address the problem

*The Australian Code of Practice on Disinformation and Misinformation*²⁷ (the voluntary code) was launched by Digital Industry Group Inc. (DIGI) in February 2021. At launch, it had six signatories - Meta, Microsoft, Google, Redbubble, TikTok, and Twitter (later known as X), with Adobe and Apple joining the code in March 2021. As of August 2024, there are nine signatories – X's signatory status was revoked in November 2023²⁸ and Twitch and Legitimate became a signatory in 2024.²⁹

The voluntary code adopts an outcomes-based approach, with two mandatory and nine opt-in outcomes that signatories are allowed to sign up to where they believe the outcome is appropriate to their business model and product offerings.

The ACMA reviewed the efficacy of the voluntary code in July 2021 with *A report to government on the adequacy of digital communications platforms' disinformation and news quality measures*.³⁰ The report identified that, although the creation of an industry code was a meaningful first step, there was a need for further improvements to be made to the scope and clarity of the voluntary code.

The voluntary code has since been updated twice, in October 2021, and December 2022. These changes included governance improvements and adjustments to broaden the scope of content covered by the voluntary code.

The ACMA provided a second report to government in July 2023³¹ assessing the revised code and progress of signatories' efforts to implement the code as a whole. The ACMA found that, although some improvements had been made, there was a lack of substantial progress in the scope, reporting, or governance of the code.

Transparency reporting under the voluntary code is inconsistent

Although the voluntary code requires signatories to report annually on progress towards achieving the outcomes contained in the voluntary code, it does not require signatories to use consistent metrics or

²⁷ Australian Code of Practice (n6).

²⁸ 'Complaint by Reset Australia against X upheld' *Digital Industry Group* (Media statement, 27 November 2023) <<https://digi.org.au/in-the-media/complaint-by-reset-australia-against-x-f-k-a-twitter-upheld-by-australian-code-of-practice-on-disinformation-and-misinformation-independent-complaints-sub-committee/>>.

²⁹ 'Twitch signs the Australian Code of Practice on Disinformation and Misinformation', *Digital Industry Group* (Media Statement, 7 February 2024) <<https://digi.org.au/in-the-media/twitch-signs-the-australian-code-of-practice-on-disinformation-and-misinformation/>>.

³⁰ Australian Communications and Media Authority, (n7).

³¹ Australian Communications and Media Authority, *Digital platforms' efforts under the Australian Code of Practice on Disinformation and Misinformation: Second report to government* (Report, July 2023).

methodologies in their reporting or for them to report trended data. As a result, industry wide analysis and comparison of efforts to address misinformation and disinformation is particularly difficult.

The ACMA has consistently encouraged industry to establish a framework of key performance metrics aimed at measuring the effectiveness of digital communication platform measures to combat misinformation and disinformation on their services.

ACMA concerns about the lack of Australian-specific data

The ACMA's two reports on the voluntary code have both highlighted an urgent need to improve the level of transparency of what actions platforms are taking to combat misinformation and disinformation, and the efficacy of those actions. In its 2023 report, the ACMA identified the following concerns with the voluntary code:³²

- signatories have not identified the KPIs they are using to track their progress to achieve the code's objectives and outcomes. Instead, they continue to provide isolated data points.
- although some signatories have included more Australian trend data, others have not included data points from previous reports.
- data continues to be provided in isolation, with limited meaningful analysis.
- signatories need to increase the amount of Australian data contained in their reports.
- the current approach to reports is not an effective vehicle to communicate signatory's measures under the code and report on their performance against the code's outcomes.

Independent assessor has raised concerns about voluntary code reporting

The DIGI appointed independent assessor of platform transparency reports, Hal Crawford, who has also identified metrics as a key area in need of improvement. In DIGI's 2024 annual report on the voluntary code, Mr Crawford's assessment of transparency reports noted that, while improved incrementally and provided more context to the signatories efforts to reduce misinformation and disinformation, there continue to be shortcomings in reporting. Mr Crawford also noted that:³³

...Unfortunately, this year progress has for the most part stalled.

...It is of considerable concern when a major Signatory continues to supply only isolated annual points. The reasoning for not providing multi-year data – that it would require contextual commentary – contradicts the core purpose of the reporting regime.

This reluctance to provide accessible data, which in any case is publicly available in the previous reports, also contradicts the recommendations of the Australian Communications and Media Authority (ACMA) in its second report to government (July2023).

Additionally, it was noted again that:³⁴

...it has been a recurring recommendation, both of ACMA and this auditor, that Signatories formally commit to internally consistent Key Performance Indicators (KPIs). The fact this has not happened is an indicator that, as stated, improvement of the reporting regime has stalled.

Concerns by an advocacy organisation about the voluntary code

In March 2024, Reset.Tech Australia complained to DIGI about concerns they had about the truthfulness of claims by Meta in their 2023 transparency reports.³⁵ Reset.Tech Australia was concerned that Meta

³² Ibid 27.

³³ DIGI, *Australian Code of Practice on Disinformation and Misinformation – Annual Report* (Report, 31 May 2024) 9.

³⁴ See *ibid*.

³⁵ 'Who are DOGO Transparency Reports for?' *Reset.Tech Australia* (Forum Post, 27 March 2024) <<https://au.reset.tech/news/who-are-digi-transparency-reports-for/>>.

overstated the efficacy of their content matching system for posts that are similar but not exact to posts that have been fact-checked. An example of alleged false content identification problem is set out in Table 1.

The matter of their complaint went beyond Meta with an aim to test how truthful the voluntary code required transparency reports to be. DIGI’s independent complaints committee dismissed the complaint in April 2024.³⁶

Table 1: Example of alleged false content identification problem

| Claim disproved by AAP Fact-Check | Language from original post in referral to Fact-Checkers – labelled as false | Another post – not labelled |
|---|--|--|
| Russia and Australia are the only two countries still considered sovereign | “Did you know ONLY 2 countries are still considered Sovereign? Russia & Australia” | “There’s only two countries that are still sovereign in the world. Australia and Russia” |

Source: Reset.Tech Australia³⁷

Reset.Tech released a policy briefing in April 2024, which sought to provide a discussion to ‘advance the thinking on best-practice transparency reporting and metrics specifically’.³⁸ Three key recommendations were presented. These were:³⁹

1. Transparency must be considered as an integral pillar of effective digital regulation.
2. Regulatory mandates for publishing transparency reports must include a detailed set of metrics.
3. Broader transparency frameworks should be considered for the Combatting Misinformation and Disinformation Bill and as part of the *Online Safety Act* review.

There is not enough direct transparency with Australian online users

During the public consultation process on the Exposure Draft Bill, concerns were raised about a lack of direct transparency with Australian users with how digital communications platforms were treating content posted on those services. The Department received significant anecdotal evidence that Australians’ content had been removed by platforms with limited information about why it had been removed or appeal options provided to the creator of the removed content.

Although signatories to the voluntary code produce annual transparency reports, these reports are not well publicised to the wider Australian public, and many platforms that are not signatories do not produce reports at all.

The voluntary code is limited in its efficacy by its voluntary nature

Notwithstanding all the matters outlined above, the voluntary code is limited by the number of digital communications platform providers who are signatories.

There are currently nine signatories but several major platforms with a significant Australian user base are not amongst that list. These platforms have not agreed to follow the obligations of the voluntary code to protect Australians from serious harm caused by misinformation and disinformation, nor do they produce

³⁶ ‘Reset Australia’s complaint against Meta dismissed’, *Digital Industry Group* (Web Page, 15 April 2024) DIGI (2023), <<https://digi.org.au/reset-australias-complaint-against-meta-under-the-australian-code-of-practice-on-disinformation-and-misinformation-is-dismissed-findings-of-the-independent-complaints-sub-committee-15-april-2024/>>.

³⁷ Ibid.

³⁸ ‘Regulating for Transparency: Transparency Reports in Australia’, *Reset.Tech.Australia* (Policy Brief, April 2024) 4. <<https://au.reset.tech/uploads/Regulating-for-Transparency-Reset.Tech.pdf>>.

³⁹ Ibid, 14.

transparency reports on the prevalence of misinformation and disinformation on their platforms, and how they work to prevent and respond to that harmful content.

Major non-signatory platforms include: Reddit (1.8 million Australian monthly active users),⁴⁰ Snapchat (8 million Australian monthly active users),⁴¹ X (2.9 million Australian monthly active users),⁴² and WeChat (400 thousand Australian monthly active users).⁴³

Despite the consistent encouragement by the ACMA and DIGI for more digital communications platform providers to join the code, only two new signatories, Twitch and Legitimate, have joined the voluntary code since 2021.⁴⁴⁴⁵

Another limitation stemming from the voluntary nature of the voluntary DIGI code is the limited compliance mechanisms available to ensure platforms uphold the obligations mandatory to all signatories as well as those that individual signatories can choose to opt in to.

⁴⁰ Australian Competition and Consumer Commission, *Digital Platforms Services Inquiry: Report on social media services* (Interim Report 6, March 2023) 61.

⁴¹ 'An update on our Australian community: 8 million and growing', *Snap* (Media Statement, 27 August 2023) <<https://newsroom.snap.com/en-GB/an-update-on-our-australian-community-8-million-and-growing>>

⁴² ACCC Interim Report 6, (n39) 46.

⁴³ Australian Competition and Consumer Commission, *Digital Platforms Services Inquiry: Regulatory reform* (Interim Report 5, September 2022) 202.

⁴⁴ Twitch signs the Australian Code of Practice, (n28).

⁴⁵ DIGI, *Australian Code of Practice on Disinformation and Misinformation – Annual Report* (Report, 31 May 2024) 3

Why is Government action needed?

Market failure

The need for policy intervention on misinformation and disinformation arises because a number of social costs associated with misinformation and disinformation are inadequately considered by the digital communications platforms. As a consequence, these costs are not considered by platform providers and instead are borne by society. This is an example of a market failure.⁴⁶

Market failures are an important consideration when assessing the case for government intervention. Markets take many of the costs and benefits borne by decision making participants into account and thereby provide incentives to reduce misinformation and disinformation; but market failures can result in these incentives not being as strong as they should be.

Where misinformation and disinformation are concerned, a number of market failures are present:

- Digital communications platforms are not strongly incentivised to invest resources in managing and restricting misinformation and disinformation. This is because the platforms are not impacted by the distribution of misinformation and disinformation, and minimising misinformation and disinformation would require the investment of resources – both systems and people.
- Conversely, misinformation and disinformation can result in controversy which can increase the size of the audience and/or traffic on a platform which can in turn be monetised by the platform (for example through advertising views).
- Disseminators of misinformation are not strongly incentivised to “fact check” information before they distribute it.
- Producers of disinformation may have a range of objectives from being mischievous to seeking to cause serious harm.

Due to the market failure, government is best placed to address this issue, as opposed to other actors such as the private sector or individuals.

Role of government

Existing regulation is insufficient. Digital communications platform providers are not incentivised to proactively promote an online information environment that minimises the spread of misinformation and disinformation. The misinformation and disinformation throughout the COVID-19 pandemic could have led to individuals making ill-informed decisions in relation to their own health and the misinformation around Australian election and referendum processes could undermine trust in democratic institutions, and fuel political unrest. Australia, as a democracy, relies on the integrity, diversity and reliability of online information to inform public debate and sound policy outcomes.

Government’s capacity to intervene

The Government is best placed to address these issues and has previously taken regulatory action in the digital platforms space through the *Online Safety Act 2021* (Online Safety Act). The Online Safety Act provides for some regulation of harmful online content but does not seek to regulate the dissemination of misinformation and disinformation. It empowers the Minister for Communications to determine basic online safety expectations for social media, relevant electronic and designated internet services, including an expectation that they will minimise the availability on their services of: cyber-bullying; cyber-abuse; non-

⁴⁶ Market failure is a concept in economic theory in which the allocation of goods and resources by existing (or free) markets is not efficient. Where there is market failure, markets will not achieve the best outcomes for the community. Market failure can result from five general factors: public good, externalities, lack of property rights, asymmetric information, and split incentives.

consensual intimate images; abhorrent violent material; and material that is otherwise outside generally accepted community standards.

Furthermore, there is an existing regulator in the ACMA. The *Australian Communications and Media Authority Act 2005* establishes the ACMA's regulatory role and allows it to assist service providers in developing codes of practice that are in accordance with community standards. The current Corporate Plan of ACMA outlines the key focus of maximising the economic and social benefits of communications content and services for Australia. The ACMA's vision of a connected and informed Australia by building consumer trust in the use of communications content and services, aligns with this goal.

Existing funding, resourcing and the subject matter expertise of the ACMA demonstrates that the Government has the capacity to support further regulation in this industry.

Objectives of the reform

The ultimate outcome that the reforms seek to achieve is to avoid or minimise the serious harms contributed to, or caused by, misinformation and disinformation spread online. As this outcome is difficult to measure, the reforms focus on ensuring digital communications platforms are held accountable for misinformation and disinformation on their platforms, and take responsibility for reducing its spread.

The reforms aim to achieve the following outputs:

- increasing transparency on how digital communications platform providers manage misinformation and disinformation on their platforms, including by:
 - requiring digital communications platforms make certain information relating to misinformation and disinformation accessible to the public on their websites and to end users of their platforms;
 - enabling ACMA to collect consistent and comparable information to better understand platforms' systems and processes relating to misinformation and disinformation, particularly as relevant to the Australian context;
 - enabling ACMA to make rules in relation to complaints and dispute handling processes for misinformation complaints.
- providing the ACMA with code and standard making powers, to provide adequate protection for the Australian community from serious harm caused or contributed to by misinformation and disinformation on platforms where platform efforts are inadequate
- facilitating greater empowerment of Australians, by requiring digital communications platform providers to have and make accessible to the public, plans about the measures they are taking to enable end-users to better identify misinformation and disinformation on their platform.

The potential barriers and risks to achieving the Government's objectives are considered in the implementation and evaluation section of this report.

Because of the disconnect between the outputs that would be directly attributable to the reforms and the desired outcomes, the Department has used a program logic to map inputs to the long term outputs.⁴⁷ The program logic in Figure 1 sets out how industry inputs and the Department's activities relate to the program's objectives and proposes outcomes against which the reforms can be assessed.

⁴⁷ Program logic is a ... tool that describes and diagrammatically represents how a project, programme or strategy intends to impact social, economic and political development in a given country, region or context. Program logic describes the stepping stones between an activity and a desired change. 'Program Logic' *Department of Foreign Affairs and Trade* (Explanatory Note, August 2018) <<https://www.dfat.gov.au/sites/default/files/explanatory-note-on-program-logic.pdf>>.

Figure 1: Suggested program logic mapping the reform outputs to the desired outcomes (reduced or avoided harms)



Policy options considered

Full range of options considered

The Department has considered a range of voluntary and co-regulatory approaches to address misinformation and disinformation disseminated via digital platforms, including voluntary and co-regulatory approaches as set out in Table 2 below.

Table 2: Full range of options considered to achieve the reform objectives

| Policy options | Examples within the option |
|--|---|
| Voluntary industry efforts and initiatives by governments and other organisations | <ul style="list-style-type: none"> • voluntary industry codes similar to the DIGI voluntary code including measures such as: <ul style="list-style-type: none"> ○ <i>third-party verification</i>: fact-checking organisations or certification programs for trustworthy sources ○ <i>collaboration with digital platforms</i>: partnering with platforms to develop tools and features that promote media literacy, such as fact-checking plugins or algorithms that highlight unreliable sources. • educational programs – supporting media literacy education in schools and community organisations to teach critical thinking skills and source evaluation. • public awareness campaigns – launching campaigns to raise awareness about the importance of media literacy and provide tips for discerning credible sources and recognising misinformation. • civil society groups – supporting civil society dedicated to media literacy, fact-checking, and promoting digital rights and online safety. • collaborative projects – facilitating collaboration and knowledge-sharing among civil society organisations, tech companies, academia, and government agencies to develop comprehensive strategies for tackling disinformation and promoting media literacy. • media support – government support for trusted news and strengthen media diversity and public interest journalism. |
| Co-regulatory approach – where industry develops a code, but government enforces it | <p>For example, the EU approach which can include elements such as:</p> <ul style="list-style-type: none"> • transparency reporting requiring platforms and media organisations to publish regular transparency reports detailing their content moderation practices, enforcement actions, and efforts to combat misinformation • establishing industry standards that are legally binding (not a graduated approach) • risk management plans • third-party data sharing with accredited researchers • dispute resolution mechanisms creating mechanisms for resolving disputes related to online misinformation, such as independent arbitration panels or ombudsman offices tasked with adjudicating complaints and disputes. |
| Legislative options | <ul style="list-style-type: none"> • empower the ACMA with: <ul style="list-style-type: none"> ○ information, code and standard making powers as per the Exposure Draft Bill (Option 2) ○ information, code and standard making powers, and new core transparency obligations (Option 3). |

As noted above, there is an existing voluntary code of practice, the *Australian Code of Practice on*

Disinformation and Misinformation – which provides the basis for the graduated approach the Government has proposed through this reform.

It is also important to note that some of the powers proposed to be included in the legislative options are co-regulatory – such as the development of codes.

Assessment of the options

Having identified the range of options to achieve the reforms, the Department considered which option would be effective in meeting the reform objectives.

As there is an existing voluntary code that has not fully addressed the problem, concerns were raised that voluntary options would not be effective in overcoming the problem. In particular, it was noted that the current voluntary code is not endorsed by all platforms and has limited ability to hold non-signatories to account – which reduces its effectiveness and creates an un-even playing field.

Similarly, through the consultation process, some stakeholders raised concerns that a co-regulatory approach alone was considered unlikely to deliver the reform objectives.

Importantly, the legislative options are proposed to be implemented in a graduated manner – and would provide a “back-stop” if the co-regulatory approaches were not effective.

Short list of options

The Department has considered three policy options in detail to address the harms associated with the spread of misinformation and disinformation on digital communications platforms.

These options include:

- **Option 1** – maintain the current voluntary industry code (status quo),
- **Option 2** – provide the ACMA with information, code and standard making powers (as per the Exposure Draft Bill), and
- **Option 3** – As per Option 2 but enshrine new core baseline transparency obligations on digital communications platforms.

It is important to note that Option 1 represents that base case (status quo) and provides a useful reference point to compare the two legislative options against. The content of the three options is summarised in

Table 3 below and are considered in further detail in the remainder of the section.

Table 3: Summary of the options considered in detail

| Option 1 | Option 2 | Option 3 |
|---|--|--|
| Maintain current voluntary industry code status quo | Provide the ACMA with information, code and standard making powers | Option 2 + new core transparency obligations on digital communications platforms |
| No changes to the ACMA powers | Record keeping rules | Record keeping rules |
| | Information gathering powers | Information gathering powers |
| | Report publishing powers | Report publishing powers |
| | Registration of codes | Registration of codes |
| | Creation of standards | Creation of standards |
| | | <p>Core transparency obligations on platforms:</p> <ul style="list-style-type: none"> • Transparency (publication) of <ul style="list-style-type: none"> ○ Media literacy plan ○ Risk assessment report ○ Misinformation and disinformation policies/policy approach • Risk management plan – if rules made by the ACMA • Complaints handling and dispute resolution (including complaints reporting) – if rules made by the ACMA. |

Digital platform rules

The ACMA is able to make ‘digital platform rules’ to implement some of the above powers. Under the Act, digital platform rules would be subject to Parliamentary scrutiny and disallowance.

As a matter of regulatory practice, the ACMA would seek industry and community feedback when developing digital platform rules and clarify the sections or sub-sections of the digital communications platform industry in scope.

Who the reform would apply to

Options 2 and 3 would result in a legislative change that would apply to all digital communications platform providers that offer services in Australia who are not otherwise excluded by legislative instruments under the Bill.

Digital communications platforms are defined as being either content aggregation services, internet search engine services, connective media services, media sharing services, or a digital service determined by the Minister in an instrument.

Content aggregation services are defined as a service where: the primary function of the digital service is to collate and present to end-users, content from a set of online sources, including sources other than the digital service. Services in scope would include news aggregators.

Internet search engine services are defined as a service that collects, indexes or ranks content from a range of online sources and where: the primary function of the digital service is to enable an end-user to search the digital service’s collection, index or ranking. Services in scope would include search engines.

Connective media services are defined as a service where:

- a) the primary function of the digital service is to enable online interaction between 2 or more end users
- b) the digital service allows end users to link to, or interact with, some or all of the other end users, and
- c) the digital service has an interactive feature.⁴⁸

Services in scope would include most social media services and instant messaging services, to the extent that they are not a SMS or MMS service, an email service, or a digital service excluded by the Minister.⁴⁹

Media sharing services are defined as service where: the primary function of the digital service is to provide audio, visual (animated or otherwise) or audio-visual content to end-users. Services that are intended to be captured by the definition would potentially include podcasting platforms and streaming platforms. These services would only be in regulatory scope if they have an interactive feature.

The Minister for Communications may also by legislative instrument specify the addition of a new subcategory of digital communications platform to the list above in response to the evolution of new or different services that emerge over time or where risks of misinformation and disinformation evolve on certain services.

Out of scope services

Any service outside this scope would have no obligations under the reform. Out of scope services include: internet carriage services, email, SMS and MMS. Online gameplay in a video game that does not involve any element of interaction outside of gameplay would also not be in scope (e.g. the movement of pieces in online chess).⁵⁰ Media sharing services that do not have an interactive feature are also excluded from any obligations in this framework.

Compliance and enforcement

The ACMA would have the ability to employ a risk-based approach to compliance and enforcement. It is anticipated that the independent regulator would assess the level of risk posed by misinformation and disinformation on digital communication platforms and may consider a range of factors, such as reach and user base, in exercising the proposed powers. See Annex B for further details.

⁴⁸ 'Interactive feature' is defined in the legislation as a digital service that has at least one of the following features: the service allows an end-user to post content on the digital service, other than as part of gameplay; the digital service provides a means for an end-user to share within the digital service and other than as part of gameplay, content that is provided on the digital service with another user; or the digital services makes interaction between end- users, or interaction by end-users with content provided on the digital service, observable to other users, other than as part of gameplay.

⁴⁹ Although instant messaging services would be in scope of the reform, private messages will be protected.

⁵⁰ For clarity, a livestreamed video of a person playing a game, hosted on a livestreaming platform where end users could comment while watching that gameplay, would be in scope of the obligations under Part 2 of the Bill.

Option 1 – Maintain the status quo (voluntary code only)

Under Option 1, the ACMA would continue to provide informal oversight of the voluntary DIGI code. It would have no regulatory powers to enforce non-compliance with the voluntary code, nor would it have any information powers. Issues related to this approach are outlined earlier in this document.

Option 2 – Provide the ACMA with information gathering, code registration and standard making powers (as per the Exposure Draft Bill)

Under Option 2, the ACMA would have powers consistent with the Exposure Draft Bill, which include:

- powers for the ACMA to create record keeping rules for digital communications platform providers regarding misinformation and disinformation disseminated via digital communications platforms.
- powers for the ACMA to gather information from digital communications platform providers and relevant other persons regarding misinformation and disinformation disseminated via digital communications platforms.
- powers for the ACMA to publish reports based on information obtained using the above powers.
- powers for the ACMA to register an industry code of practice or create an industry standard should industry efforts prove insufficient.

An effective self-regulatory scheme is the preferred approach. However, the Bill provides a graduated set of powers that will enable enforceable codes to be registered, and standards to be made by ACMA if industry efforts are inadequate.

Under this Option, the ACMA would be able to exercise the following information powers regardless of whether or not digital communications platforms are already signatories to an existing voluntary code of practice.

Record keeping rules

The ACMA would be provided with the power to make digital platform rules to require digital communications platform providers to make and retain records relating to:

- misinformation or disinformation on the digital communications platform
- measures implemented by the digital communications platform provider to prevent or respond to misinformation or disinformation on the service.⁵¹

The ACMA may require digital communications platform providers prepare reports consisting of information contained in the records, and require providers to give any or all of these periodically to the ACMA. This would enhance transparency and allow tracking of digital communications platforms' progress in addressing misinformation. For instance, digital communications platform providers of certain services specified in the rules may be required to keep records of complaints and reports related to misinformation, and the measures taken in response, and provide this information in the form of a regular report to the ACMA.

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

The ACMA would consult with industry in developing the record keeping rules and measurement framework as part of the usual consultation processes under the *Legislation Act 2003*.

⁵¹ This could include information regarding how platforms identify content that is false, misleading or deceptive; and the effectiveness of the measures designed to prevent and respond to misinformation.

Information gathering

The ACMA would have information-gathering powers that could be used to compel digital communications platform providers to give information and documents relevant to the same matters as the record keeping rules.

The information gathering powers may be exercised on an as needed basis. The ACMA would not be able to require a digital communications platform to provide source code.

The ACMA may also request information from other persons (legal persons) on the same matters in certain circumstances. These persons could include fact-checkers or other third-party contractors to digital communications platform providers, to assist the ACMA monitor compliance with misinformation codes, misinformation standards and digital platform rules.

Publication

To promote transparency, the ACMA would have the ability to publish the information collected under the information-gathering and record keeping powers on its website, including the identity of the platform to which the information relates.

Codes, standards and general provisions

Overview

If the ACMA was to conclude that, for the protection of Australians from serious harm, it was necessary to register an industry code of practice, it would be empowered to request the digital communications platform industry (or sections of the industry) develop one to be registered through a legislative instrument. Codes would require participants in the industry to implement measures to prevent or respond to misinformation and disinformation. Codes could be varied from time to time.

If industry was unable to develop a code, or a code that was in place was insufficient to protect Australians from serious harm, the ACMA would be empowered, through a legislative instrument, to register an industry standard that would require identified participants or sections of industry to implement measures to prevent or respond to misinformation and disinformation.

Sections of the digital communications platform industry

ACMA's code and standard-making powers could apply to one or more sections of the digital communications platform industry, comprising content aggregation services, internet search engine services, connective media services, and media sharing services.⁵²

The Minister would have the power to specify new kinds of digital communications platforms, which would then fall within scope of the misinformation and disinformation codes and standard powers. The identified sections of the digital communications platform industry may not necessarily be mutually exclusive and may consist of the aggregate of any two or more sections or may be subsets of a section of the industry noted above.

In practice, a single industry body could make a single industry code that covers all segments of the industry. This is similar to the current self-regulatory arrangements under the voluntary code. This approach may be optimal when platforms operate several digital communications platform services. For example, Company Z is a provider of various digital communications platform services such as news aggregation, search engine, social media platform and podcast service.

⁵² The misinformation code and standard-making powers would not extend to excluded services for misinformation purposes. All other digital communications platforms services would be within scope of the code registration and standard making powers.

Alternatively, an industry body representing one section of the industry could develop a code only relating to their segment.

Matters that may be dealt with in a code and standard

The following are some examples of matters that may be dealt with by misinformation codes and standards:

- preventing or responding to misinformation or disinformation on digital communications platforms
- using technology to prevent or respond to misinformation or disinformation on digital communications platforms
- preventing or responding to misinformation or disinformation on digital communications platforms that constitutes acts of foreign interference (within the meaning of the *Australian Security Intelligence Organisation Act 1979*)
- preventing advertising involving misinformation or disinformation on digital communications platforms
- preventing monetisation of misinformation or disinformation on digital communications platforms
- supporting fact checking
- allowing end-users to detect and report misinformation or disinformation on digital communications platforms
- policies and procedures for receiving and handling reports and complaints from end-users
- giving information to end-users about the source of political or issues-based advertisements
- policies and procedures for receiving and handling reports and complaints from end-users
- giving end-users and others information about misinformation or disinformation on digital communications platforms, including management of misinformation or disinformation on digital communications platforms
- giving end-users and others information about authoritative content and factual information on digital communications platforms
- improving media literacy of end-users.

Limitation – private messages

The ACMA would not be able to approve and register a code (or part of a code), or determine a standard, relating to:

- the content of private messages
- the encryption of private messages.

Limitation – restriction on removing content and blocking end users

The ACMA would not be able to approve a code or determine a standard that *requires* digital communications platform providers to remove content posted by end-users on their platform, unless the dissemination involves inauthentic behaviour.

Similarly, codes and standards will not be able to *require* digital communication platform providers to block end-users from using a platform except in cases where end users are engaged in disinformation involving inauthentic behaviour.

However, nothing will prevent digital communications platform providers removing content or blocking end users in accordance with their own terms of service. Illegal content may also be required to be removed from a digital communications platform in accordance with other laws.

Register of misinformation codes and standards

The ACMA is to maintain an electronic register of codes and standards and publish this on its website to provide transparency and accessibility to the public and industry.

Codes of Practice

The ACMA may register codes

The ACMA would have the ability to approve and register industry developed codes which govern the arrangements of the digital communications platform industry to which it applies to combat misinformation and disinformation.

The ACMA would need to be satisfied of a number of factors before approving an industry code including:

- the body or association proposing the code represents a particular section (or all sections) of the digital platform industry and it has consulted with members of the public and participants in the industry and at least one body or association that represents the interests of consumers
- the code requires participants in that section of the industry to implement measures to prevent or respond to misinformation or disinformation on the platforms
- the code enables assessment of compliance with the measures
- 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 than reasonably necessary to do so.

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

The ACMA may examine the codes it has previously registered when it considers a code for potential registration to avoid conflict between a new code and existing code.

The ACMA may request misinformation codes

The ACMA would have the power to request an industry body or association representing a particular section (or sections) of the digital platform industry to develop a new industry code which applies to its participants and deals with matters relating to the operation of digital communications platforms by those participants.

The ACMA may specify the timeframe in which the new code must be developed and provided to the ACMA (being no less than 120 days). The ACMA may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

The ACMA cannot make such a request unless it is satisfied that the development of a code is necessary in order to prevent or respond to misinformation or disinformation on digital communications platforms, or to address systemic issues. The ACMA must also be satisfied that in the absence of such a request, it is unlikely that the code would be developed within a reasonable period.

When no industry body or association exists

If the ACMA is satisfied that an industry body or association does not exist for a particular section of the digital platform industry, it may publish a notice on its website inviting industry to form such a body or association in order to develop a code. If the ACMA publishes such a notice, it must give industry at least 60 days to form a representative body or association. The ACMA may decide to do this, for example, if it determines that an industry code is necessary to protect Australians from misinformation or disinformation in a particular section of the digital platform industry.

Variation of misinformation codes

Given the codes are likely to cover a range of different measures that may need to change over time, the ACMA has the ability to consider variations to sub parts of codes proposed by industry, rather than the code as a whole. This is intended to allow variations to be considered and registered more quickly, allowing safeguards to come into force in a timelier manner.

The ACMA may, by written notice given to the body or association, approve the draft variation. Except in the case where the variation is of a minor nature, the body or association must have published the draft variation

on its website and given members of the public and participants in the industry at least 30 days to make submissions.

Registration of variation

If ACMA approves a draft variation of the code, the ACMA must vary the misinformation code included on the electronic Register on the ACMA website.

The ACMA would also have the ability to revoke the approval of a misinformation code or a provision of a misinformation code. Revocation may be appropriate in circumstances where obligations in a code are no longer relevant or operational because they have, for example, been replaced by a subsequent code or a standard. The approval of a code could also be revoked if an industry body no longer existed to maintain and update the code. If the approval is revoked, ACMA must remove the code or provision from the electronic Register. This would mean that compliance with the code is no longer mandatory nor subject to the ACMA's oversight.

Standards

The ACMA would be able to determine standards for industry through a legislative instrument. This is generally intended to be a last resort, and these provisions would carry higher penalties in cases of non-compliance reflecting the graduated nature of the powers. A standard made by the ACMA could apply to one or more sections of the industry.

The ACMA would also be required to consult with the relevant body or association (where it exists) before making a standard. The matters that the ACMA can determine standards about as well as the limitations on these powers are the same as codes.

General requirement – consideration of freedom of political communication

The ACMA would be required to be satisfied of the following general factors before determining a standard:

- the standard 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 and disinformation on the platform
- goes no further than reasonably necessary to provide adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on the platform.

The ACMA would be required to submit an explanatory statement of how the standard is compatible with human rights.

The ACMA may determine standards when a request for a code is not complied with, or no industry body or association has been formed

The ACMA may determine a standard if a request for a code is not complied with, indicative targets for code development were not met or the ACMA otherwise refuses to approve a code; and the ACMA is satisfied that it is necessary to determine a standard in order to provide adequate protection for the community from serious harm caused or contributed to by misinformation or disinformation on the platforms.

If no industry body or association exists and none has been formed following the ACMA publishing a notice inviting one to be formed for the purpose of creating a code, the ACMA may determine a standard for the unrepresented section of the digital communications platform industry.

The ACMA may determine standards when an existing code fails

Should a registered code exist, and the ACMA has determined that it is partially or wholly deficient in protecting Australians from serious harm caused or contributed to by misinformation or disinformation on the platforms, the ACMA may give a notice to the body that developed the code requesting that the deficiencies be addressed in a specified period. If the body is unable to address the deficiencies to a satisfactory standard,

the ACMA may determine a standard that supersedes the deficient code (or parts of it in the case of a partial failure).

The ACMA may determine standards due to emerging circumstances

There may be exceptional and urgent circumstances where Australians are at significant risk of harm from misinformation or disinformation (e.g. during time of war). If the ACMA determines a code or standard is necessary or to provide protection, and the ACMA considers a code may not be able to be made in a reasonable time period, then the ACMA could determine an industry standard.

Variation of standards and revocation of standards

The ACMA would have the ability to vary or revoke a misinformation standard, including by adding or removing sections or amending or strengthening requirements.

Enforcement

The ACMA would have powers to enforce compliance with the new obligations on platforms. The ACMA would be able to use its information powers to seek information from platforms, or relevant third parties to ensure that codes and standards are being complied with. Where breaches are found, the ACMA would be able to take regulatory action commensurate with the seriousness of the breach and the level of harm. Whilst ultimately a matter for ACMA, it is expected that the ACMA will generally use the minimum power or intervention necessary to achieve compliance.

The graduated regulatory enforcement tools available to the ACMA are summarised in Table 4 below.

Table 4: Graduated enforcement methods

| Type | Details of enforcement |
|---------------------------------|---|
| Formal warnings | Notices issued for non-compliance with any obligations, specifying the nature of the breach and steps to remedy the situation. |
| Remedial directions | A legally binding direction to take specific remedial action to ensure the obligation is not contravened or is unlikely to be contravened in the future. |
| Enforceable undertakings | A voluntary agreement by a person or digital communications platform provider to comply with an obligation. |
| Infringement notices | A penalty notice issued by the ACMA for breaching certain obligations, which carries a lower financial penalty than a civil penalty. |
| Injunctions | The ACMA may seek a court issued injunction to enforce compliance, particularly if repeated breaches occur after a formal warning or remedial direction has been issued. |
| Civil penalties | Financial penalties imposed by a court as a result of a breach of obligations which would serve as a deterrent against future non-compliance. Civil penalties will not be able to be given for breaches of a code, unless a digital communications platform provider has previously received a formal warning. |

Option 3 – Provide the ACMA with information, code registration and standard making powers, and new core transparency obligations

Option 3 includes the powers outlined in Option 2 with additional new baseline or core transparency obligations – which are described in detail below.

The ACMA would be able to use digital platform rules to exempt platforms from the core transparency obligations if it determined that it was not necessary to place regulatory requirements on certain platforms to protect Australians from serious harm.

Policies

Digital communications platform providers would be required to make accessible on their website and to end users, their policies or policy approach in relation to misinformation and disinformation on their platforms.

Risk assessment

Digital communications platform providers would be required to demonstrate to the ACMA they had conducted risk assessments in relation to misinformation and disinformation on their services including those arising from the design of their service and the use of the service by end-users. The digital communications platform providers would be required to make accessible on the website and to end users, the outcomes of their risk assessments by way of a report.

Risk management

The ACMA would be given powers to make digital platform rules that require digital communications platform providers demonstrate to the ACMA they had developed a plan to mitigate any identified risk relating to misinformation and disinformation on their services. The ACMA could specify that the management plan should report on how the digital communications platform provider proposes to address risks it has identified in its risk assessment, or report on how it is addressing particular specified risks, for example. These rules would be disallowable legislative instruments subject to Parliamentary scrutiny.

Any risk management plans provided to the ACMA would not be published.

Media literacy plan

Digital communications platform providers would be required to demonstrate to the ACMA they have a plan to assist their Australian users to better identify misinformation and disinformation on the platform, including to enable end-users to identify the source of content disseminated on the platform. The nature of the digital communications platform provider's media literacy plan is likely to depend on the nature of the platform, and how the platform is structured and generally used. This obligation will apply to all digital communications platforms unless they are excluded from the obligations under Division 2 of the Bill by the ACMA, or from the regulatory scope of the Bill by the Minister for Communications.

The ACMA would also have the power to create digital platform rules (applying to specific providers or classes of providers that are high risk for example), specifying further detail in relation to media literacy plans, should this be required (for example, that platforms must update their media literacy plans in response to new technologies that offer more effective tools to enable end-users to identify misinformation and disinformation). These rules would be subject to disallowance by the Parliament.

Complaints handling and dispute resolution

There would be powers for the ACMA to create digital platform rules requiring digital communications platforms to implement and maintain complaints and dispute handling processes for misinformation or

disinformation complaints. This could include rules allowing users to dispute the treatment of their own content (for example, if a person disagreed with a fact check applied to their post). Many digital communications platforms both within the voluntary code and outside of it already operate a service that would be in line with this obligation. The purpose of these powers would be to enable the ACMA to make rules as necessary for certain classes of platform. These rules would be subject to disallowance by Parliament.

The digital platform rules could also contain obligations for the digital communications platform providers to publish information about how complaints and disputes are handled, and information on the number of complaints and disputes relating to misinformation and disinformation have been received and how they were responded to.

It is important to note that this obligation would only exist where the ACMA makes digital platform rules. The ACMA:

- may wish to wait and see how the industry responds to other processes before making any rules
- would be required to consult with the digital communications platform industry in developing the rules consistent with the requirements in the *Legislation Act 2003*.

Formation of an internal dispute resolution code

In July 2019, the ACCC published the final report for the Digital Platforms Inquiry (DPI) (2019). One of the report's findings was that internal dispute resolution (IDR) processes of large digital platforms could be improved. These findings were affirmed in the Fifth Interim Report for the Digital Platform Services Inquiry (DPSI) (November 2022), which further clarified that digital platforms that provide search, social media, online private messaging, app store, online retail marketplace and digital advertising services, should be obliged to meet mandatory minimum IDR standards.

Following the Government's response to the DPSI, supporting in principle the need to have adequate processes for consumers to raise issues and concerns faced online, in February 2024, the Minister for Communications and the Assistant Treasurer and Minister for Financial Services jointly wrote to digital platforms industry representatives inviting them to develop voluntary IDR code by July 2024. The letter refers the platforms to key resources in the development of the IDR code to ensure it is consistent with Government expectations, including the 2019 DPI and 2022 DPSI reports.

The voluntary IDR Code will be wide ranging and serves as a foundational first step to uplift dispute resolution standards across the digital platforms sector. It will not preclude other mandatory dispute resolution requirements that Government may identify as necessary additions in the future.

Publication obligations

There would be a new industry-wide obligation for digital communications platform providers to publish transparency information in relation to the obligations outlined above. This would include:

- their policies on misinformation and disinformation
- reports on the outcomes of their risk assessments
- their current media literacy plans
- if the ACMA has created digital platform rules on complaints handling and dispute resolution – information on how their processes work, the number of complaints received and disputes, and how they have responded to them.

This obligation would be very similar to the reporting requirements existing in the voluntary code but could apply to the entirety of the digital communications platform industry, including non-signatories of the voluntary code.

The purpose of these reports is so Australians would be clearly informed about how platforms identify certain content and make decisions regarding content they may have posted.

The ACMA would have the power to make digital platform rules specifying information that platforms must make accessible on their website and to end users. However, digital communications platform providers

would not be required to publish any information which might result in a significant security vulnerability for the platform, or an increase of misinformation or disinformation.

Exemption from core transparency obligations

The ACMA would be able to exempt certain classes of digital communications platforms from the core obligations under Division 2 (Transparency) of the Bill through digital platform rules.

Impact analysis

An economic analysis was used to compare the shortlisted reform options (Options 2 and Option 3) against the base case (Option 1). The economic analysis seeks to consider the full range of advantages and disadvantages of each of the options including financial, social and environmental impacts.

Two different approaches were used to undertake the economic analysis.

- The first approach used was a break-even analysis. This approach is used for this Impact Analysis as the type and value of the benefits can be identified – but the scale and frequency of the benefits is hard to estimate accurately.
- The second approach used is to compare the quantified costs of the project with surveys of members of the public's *Willingness To Pay* (WTP) for reduced levels of misinformation and disinformation.

Both the approaches used align with the Government guidance on cost benefit analysis.⁵³

Stakeholders identified and considered in the analysis

In framing the economic analysis, the following stakeholder groups were identified as being potentially impacted by the reform options:

- Commonwealth Government
- State and local governments
- Digital communications platform providers
- Other business & industry
- Consumers, community and the environment.

These stakeholder groups were used to assist in identifying, quantifying and distributing the costs and benefits of the reform options against the base case.

While the direct costs of the reforms will fall predominantly to digital communications platform providers and the Commonwealth Government, the benefits will be distributed more broadly across all levels of government as well as the broader industry and community.

Government costs estimation

The 2023-24 Federal Budget provided the ACMA with \$2.3 million in 2023-24 and \$1.9 million per year thereafter to implement the powers.

The costs of the legislative reforms to the ACMA are difficult to estimate accurately given the current voluntary code and the proposed mix of legislative requirements and co-regulatory approaches.

As it is not possible to precisely estimate the cost for the ACMA to implement and regulate the minimum requirements of the proposed legislative options, a conservative (i.e. high) estimate of the costs of reform have been used for this economic analysis.

Industry cost estimation

The industry costs are estimated for different segments of industry. The number of industry stakeholders in each segment is set out in Annex A and the estimation of the costs for each segment under each option are set out in detail in Annex B.

⁵³ Cost Benefit Analysis, (n3).

Option 1 – Maintain the status quo

As Option 1 forms the base case for the economic analysis, it does not introduce any new regulatory costs on businesses, community organisations or individuals (Table 5).

Table 5: Option 1 Regulatory costs

| Item | Businesses | Community organisations | Individuals | Total change in costs |
|---------------------------|------------|-------------------------|-------------|-----------------------|
| Total (\$ million) | 0.000 | 0.000 | 0.000 | 0.000 |

Option 2 – Provide the ACMA with information, code registration and standard making powers (as per Exposure Draft Bill)

As detailed in the previous section, Option 2 is the suite of powers that were set in the Exposure Draft Bill. It contains new powers for the ACMA to gather information, make record keeping rules, and if required, regulate the digital communications platform industry with regards to misinformation and disinformation. Only the information gathering powers would apply from the commencement of the legislation. As a further impact analysis would be undertaken prior to the introduction of any digital platform rules, codes or standards made, these elements are not considered as part of the current Impact Analysis.

The estimated costs to businesses for complying with the information gathering powers is **\$3,097,500 per annum**. This assumes four very large platform providers, 10 large platform providers, and 34 small platform providers accessible in Australia would be impacted by the legislative requirements. For further assumptions, see Annex B.

No impacts on community organisations or individuals were identified.

Table 6: Option 2 Initial Regulatory Costs

| Item | Businesses | Community organisations | Individuals | Total change in costs |
|---------------------------|------------|-------------------------|-------------|-----------------------|
| Total (\$ million) | \$3.0975 | 0.000 | 0.000 | \$3.0975 |

Option 3 – Provide the ACMA with information, code registration and standard making powers, and provide core obligations on platforms

Option 3 provides the most benefit to the community through the new ACMA powers in Option 2, and the addition of core obligations on digital communications platforms to boost transparency around platforms policies and risk assessments, and empower Australian users through media literacy and potential complaints resolution provisions. Option 3 has a regulatory impact on the businesses which is outlined below.

This Option does not introduce any new regulatory costs on community organisations or individuals.

TRANSPARENCY OBLIGATIONS (PUBLICATION)

Digital communications platform providers would be required to publish:

- their policies on misinformation and disinformation
- reports on the outcomes of their risk assessments

- their media literacy plans, and
- if the ACMA has created digital platform rules on complaints handling and dispute resolution – information on how their processes work, the number of complaints received and disputes, and how they have responded to them.

The obligation would produce a new level of accountability on platforms and give Australian platform users a better understanding of how platforms treat their content.

Compliance would be mandatory, and would create new regulatory costs for businesses, although several businesses would not need to hire additional staff as they already produce transparency reporting under the voluntary code.

The estimated costs to businesses for meeting the transparency obligation is **\$3,097,500 per year**. This assumes four very large platform providers, 10 large platform providers, and 34 small platform providers accessible in Australia would be impacted by the legislative requirements. For further assumptions, see Annex B.

MISINFORMATION AND DISINFORMATION POLICY

Digital communications platform providers would be required to publish their policies or policy approach on their treatment of misinformation and disinformation. The estimated costs to businesses for meeting this obligation is **\$1,785,000 per year**. This assumes four very large platform providers and 10 large platform providers would not be impacted as they are likely to already have developed and maintain a policy of this kind. In contrast the 34 small platform providers would have a small impact.

RISK ASSESSMENT OBLIGATIONS

Digital communications platform providers would be required to demonstrate to the ACMA they were actively considering the risk profile of their platform(s) in relation to misinformation and disinformation, and to provide a report on the outcomes of that risk assessment. There would also be a requirement for platform providers to demonstrate they had developed plans to manage any identified risks if required by the digital platform rules.

Compliance would be mandatory and would create new regulatory costs for businesses. The estimated costs to businesses for meeting the risk assessment obligation is **\$4,147,500 per year**. This assumes four very large platform providers, 10 large platform providers, and 34 small platform providers accessible in Australia that would need to produce or update one risk management plan per year would be impacted by the legislative requirements. For further assumptions, see Annex B.

MEDIA LITERACY OBLIGATIONS

Digital communications platform providers would be required to demonstrate they have developed and published a plan to assist Australian users to better identify misinformation and disinformation on the platform, including to enable end-users to identify the source of content disseminated on the platform.

Compliance would be mandatory and would create new regulatory costs for businesses. The estimated costs to businesses for meeting the media literacy obligation is **\$4,147,500 per year**. This assumes four very large platform providers, 10 large platform providers, and 34 small platform providers offered in Australia that would need to produce or update one media literacy plan per year would be impacted by the legislative requirements. For further assumptions, see Annex B.

INTERNAL DISPUTE RESOLUTION

The ACMA would be given powers to make digital platform rules that could require digital communications platform providers to implement and maintain complaints and dispute handling processes for misinformation complaints, and publish certain complaints information.

As the ACMA would need to undertake a separate Impact Analysis prior to introducing these requirements, they are not considered within this assessment.

TOTAL REGULATORY COST

The projected total regulatory cost for businesses arising from Option 3 is measured as **\$16,275,000 per year** – as set out in Table 7, below.

Table 7: Option 3 Industry costs

| Item | Businesses | Community organisations | Individuals | Total change in costs |
|--|------------|-------------------------|-------------|-----------------------|
| OPTION 3 = OPTION 2 costs + core transparency obligations costs | | | | |
| OPTION 2 costs (\$ million) | \$3.0975 | 0.000 | 0.000 | \$3.0975 |
| Core transparency obligations | | | | |
| Transparency obligations – publication (\$ million) | \$3.0975 | 0.000 | 0.000 | \$3.0975 |
| Misinformation and disinformation policy (\$ million) | \$1.785 | 0.000 | 0.000 | \$1.785 |
| Risk assessment obligations (\$ million) | \$4.1475 | 0.000 | 0.000 | \$4.1475 |
| Media literacy obligations (\$ million) | \$4.1475 | 0.000 | 0.000 | \$4.1475 |
| Total (\$ million) | \$16.275 | | | \$16.275 |

See Annex B for further detail on these calculations.

Benefit identification

The benefits of the reform options are avoided harms. These align with the types of harms set out in the first section of this Impact Analysis:

- **Public health risks:** misinformation about health, vaccines, and medical treatments can lead to people making ill-informed decisions about their health, potentially resulting in the spread of diseases, refusal of life-saving treatments, or reliance on dangerous or ineffective remedies.
- **Economic consequences:** misinformation can affect economic stability by spreading false information about businesses, financial markets, or economic policies. This can lead to investor panic, market instability, and loss of confidence in financial institutions, impacting both local and global economies.
- **Social cohesion:** disinformation campaigns can exacerbate social divisions, undermine trust in democratic institutions, and fuel political unrest. Failure to regulate misinformation and disinformation can contribute to polarisation, radicalisation, and even promote violence within societies.

Despite the current voluntary code, there is genuine concern that, with the increased use of digital communications platforms and increased power of computing systems including Artificial Intelligence (AI), the continuation of the voluntary code would not be effective in managing these harms. Table 8 sets out the specific harms that aim to be avoided under the reforms – and so are a benefit compared to the base case.

Table 8: Benefits (in the form of avoided harms) that would arise from the reforms

| Category | Description |
|--|--|
| Electoral processes | Harm to the operation or integrity of the electoral process. |
| Health of Australians | Harm to public health, including reduced efficacy of preventative health measures. |
| Hatred towards groups | Vilification of a group or a member of the group, e.g. by race, religion, sexual orientation, gender identity, disability, nationality or ethnic origin. |
| Physical injury to individuals | Risk of intentionally inflicted injury to an individual or individuals, regardless of whether a member of one of a group above. |
| Critical infrastructure or emergency services | Damage to critical infrastructure or disruption of emergency services, including to systems, services, capital equipment and permanent installations fundamental to society. Emergency services include the police, fire, ambulance. |
| Economic harm | Harm to the Australian economy, including harm to public confidence in the banking system or financial markets. |

Benefit valuation approach

A broad literature review was conducted based on the descriptions of benefits and possible valuation approaches identified in the previous sections. This review used the following search criteria:

- Studies that are recent – within the last decade
- Relevant to an Australian context
- Studies that include one or more of the following key search terms: “misinformation”, “disinformation”, “cost benefit analysis”, “fear”, “anxiety”, “violence”, “physical harm”, “election”, “infrastructure”, “values”, “burden”, “Australia”, “economics”, “fake news”, “social media”.

Informed by the literature, three valuation approaches were identified:

1. Alternative strategies that would be used under the base case to avoid the damage
2. Value of the harm caused – such as health impacts measured through a Value of Statistical Life Year
3. Value of repair or replacement costs.

Table 9 provides a more detailed description of the benefits under each category that were used as well as the valuation approach that could be used to estimate each of them quantitatively.

Table 9: Benefit categories with description and possible valuation approach

| Category | Values used as an estimate of the avoided harm | Valuation approach for avoided harm |
|--|---|---|
| Electoral processes | Consideration of election costs arising in Australia and contemplation of if an election was considered invalid and may be re-run. | Cost to repeat the process (replacement costs) |
| Health of Australians | Identification of the benefits that arise from existing health screening programs (such as National Cervical Screening Program and National Bowel Cancer Screening Program) and consideration of the potential impact of misinformation on participation rates. This harm would reduce the identified benefits of the screening programs. | Reduced health benefits arising from screening programs (Value of harm) |
| Hatred towards groups | Analysis of impacts of psychological distress on Health State Utility and the current levels of anxiety in the Australian population. | Value of harm based on the Value of Statistical Life Year |
| Physical injury to individuals | Analysis of the cost of violence to women as a proxy value for the cost of violence to minority groups. | Value of harm, potentially quality-adjusted life year (QALY) and disability-adjusted life year (DALY) |
| Critical infrastructure or emergency services | Economic analyses of downtime costs, repair, and replacement expenses, as well as the costs of deploying emergency responses due to misinformation-induced panics or attacks. Infrastructure resilience studies could provide a framework for understanding the broader economic implications. | Not considered quantitatively |
| Economic harm | Economic models that estimate losses from reduced consumer and investor confidence could be used. Financial market analysis might reveal the impact of misinformation on stock prices, investment flows, and market volatility. The costs associated with regulatory interventions to restore confidence could also be considered. | Not considered quantitatively |

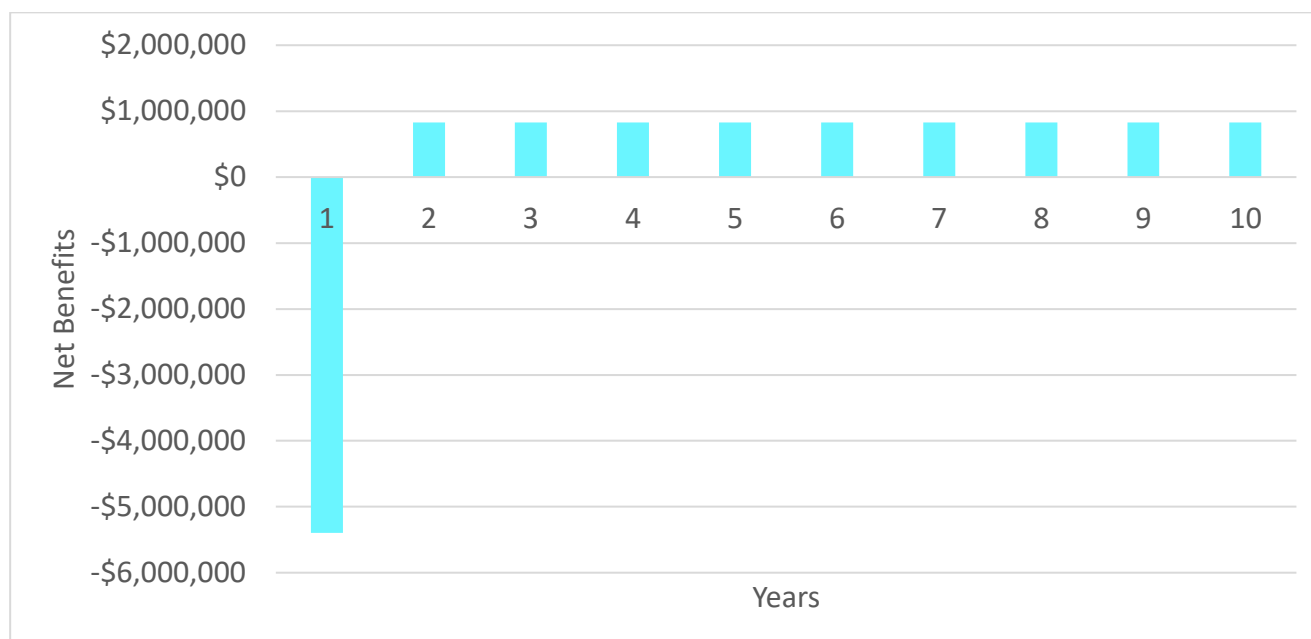
The following section provides the value estimates and estimation approach in detail for each benefit category.

Timing of costs and benefits

Importantly for cost benefit analysis, it was assumed that implementation costs would arise in the first year (2025) and then ongoing costs would occur thereafter. It was also assumed that, due to the proposed implementation timings, benefits would arise from year 2 onwards. In reality, it appears likely that some of the benefits will commence earlier, but more conservative assumptions were used for the analysis.

The conservative assumptions around the timings result in a significant cost in the first year and which is then offset by benefits from year 2 onwards.

Figure 2: Graph of net benefits for each option to account for timings



The central case for the cost benefit analysis is based on a 10-year cost benefit analysis using 2024 real values and a discount rate of 7 percent. Alternative durations and discount rates are considered in the sensitivity analysis.

Benefit discussion and break-even analysis

Health of Australians

Australia undertakes a range of preventative health programs, such as cancer screening programs and vaccine programs. Cancer screening programs are an area that could be impacted by misinformation and disinformation and have reliable data on the costs and benefits of the programs. Three of the largest cancer screening programs are set out in Table 10.

Table 10: Summary of key cancer screening programs

| Program | Population | Screening frequency | Participants | Participation rate | Program cost (yearly) |
|---|---|---------------------|--------------|--------------------|-----------------------|
| National Cervical Screening Program monitoring¹ | Women aged 25–74 | 5 yearly | 4.7 million | 68% | \$496,000,000 |
| Breast cancer^{1,2} | Women aged 50–74 | 2 yearly | 886,000 | 49% | \$316,000,000 |
| National Bowel Cancer Screening Program in Australia^{1,3} | People aged 45 – 74 (was reduced from 50 in July 2024) | 2 yearly | 2.5 million | 40% | \$140,000,000 |

Sources:

1. Jie-Bin Jew et al 'Benefits, harms and cost-effectiveness of cancer screening in Australia: an overview of modelling estimates', (2019) 29(2) *Public Health Research and Practice* 1 <<https://www.phrp.com.au/wp-content/uploads/2019/07/PHRP2921913.pdf>>.
2. 'Breast screening rates', *Cancer Australia* (Web Page, 26 June 2024) <<https://ncci.canceraustralia.gov.au/screening/breast-screening-rates/breast-screening-rates>>.
3. Michael P. Pignone et al, 'Costs and cost-effectiveness of full implementation of a biennial faecal occult blood test screening program for bowel cancer in Australia', (2011) 194(4) *Medical Journal of Australia* 180 <www.mja.com.au/journal/2011/194/4/costs-and-cost-effectiveness-full-implementation-biennial-faecal-occult-blood>

A key point to note from the tables is that the participation rate varies significantly between the programs, and each have the potential for higher participation. While there may be a range of drivers for the low participation rates, the underlying result is that many potential participants do not understand the benefit the program would provide them or consider that these benefits are outweighed by perceived costs. This misunderstanding of the advantages and disadvantages of participating in the program means that there is already some level of misunderstanding or misinformation present.⁵⁴

The key benefit of the screening programs is the ability to diagnose and treat the diseases earlier. Early detection and treatment provide two key benefits – treatment costs are lower and treatment success rates are higher. A previous review of these programs estimated the number of cancers and deaths prevented as well as the cost per year of life saved⁵⁵ and this data is summarised in Table 11.

Table 11: Previous estimate of the benefits of cancer screening programs

| Program | Annual cancers prevented | Annual deaths prevented | Life Years Saved |
|--|--------------------------|-------------------------|------------------|
| National Cervical Screening Program monitoring | 3,835 | 1,734 | 16,423 |
| Breast cancer | Not estimated | 580 | 4,857 |
| National Bowel Cancer Screening Program in Australia | 4,826 | 2,801 | 23,631 |
| Total | 8,661 | 5,115 | 44,911 |

Based on the 2023 value of a statistical life year (\$235,000)⁵⁸, it is possible to estimate the decrease in participation that would offset the costs of reform Option 2 and Option 3. The analysis identifies that if the reform avoided some participants from dropping out of the program, this would offset the costs of the reforms.

Table 12 shows that only a 0.06 percent change in participation under Option 2 (equating to 3,922 people) or 0.20 percent under Option 3 (equating to 14,154 people) would be required to offset the cost of the reform.

Table 12: Break-even analysis for changes in participation in cancer screening programs

| Reform option | Breakeven change in participation | Breakeven change in participant numbers |
|---------------|-----------------------------------|---|
| Option 2 | 0.0562% | 3,922 |
| Option 3 | 0.2029% | 14,154 |

The analysis sets out that even if only focussed on one form of preventative health program, the proposed reforms would need to have a negligible benefit (in avoiding participant drop out) to offset the reform costs. From this, either of the reform options are likely to deliver a net benefit to the health of Australians.

⁵⁴ Jonathon O'Hara et al. 'Barriers to Breast Cancer Screening among Diverse Cultural Groups in Melbourne, Australia', (2018) 15(8) *International Journal of Environmental Research and Public Health* 1677.

⁵⁵ Jie-Bin Jew et al 'Benefits, harms and cost-effectiveness of cancer screening in Australia: an overview of modelling estimates', (2019) 29(2) *Public Health Research and Practice* 1.

As Option 3 provides ACMA with a more active role in encouraging transparency on misinformation and disinformation on platforms and on providers’ strategies to counter it, it appears more likely than Option 2 to achieve a change in participation.

Hatred towards groups

To estimate the value of hatred towards groups, a 2023 study was used that measures the impacts of psychological distress on Australian adults.⁵⁶ This study enables estimation of some of the economic impacts of hatred towards groups. The analysis is based on the hypothesis that misinformation and disinformation about minorities within society will result in anxiety at a level that impacts on behaviour and be considered a mild form of psychological distress (PD).

The analysis considered someone moving from no PD to mild level of PD. It was also identified that misinformation and disinformation about minorities within society may result in PD to the subjects of the content and also to the recipients who believe the misinformation and disinformation and alter their behaviour.

The study⁵⁷ contains current health state utilities (HSU) for mild, moderate and severe PD which includes: “conditions of emotional disturbance marked by symptoms associated with mental disorders, which may encompass manifestations of depression, such as diminished interest, feelings of sadness and a sense of hopelessness, as well as symptoms of anxiety such as restlessness and tension. At times, it may be accompanied by somatic symptoms, including insomnia and headaches”.

The estimated loss of HSU from no PD to mild PD is a value of 0.1 (i.e. the loss of 10 percent of the HSU and benefit gained from living compared to a healthy person).

The value of a statistical life year⁵⁸ and the change in HSU and associated dis-utilities can be used to conduct a break-even analysis which estimates how many people would need to avoid moving from having no symptoms of PD to mild PD, in order to make each of the policy reform options “break-even”.

It is also important to note that in 2020-21, 17 percent of Australians aged 16 to 85 saw a medical professional for their mental health giving a total of 3.4 million people.⁵⁹

The results of this analysis indicate that the required avoided cases of mild PD would be 248 for Option 2 and 895 for Option 3, meaning the impact of the policy reform would only need to be very small for the costs of the reform to be offset (Table 13). These values represent a very small percentage change in the number of Australians with mental health concerns (0.01 percent for Option 2 and 0.03 percent for Option 3).

Table 13: Break-even analysis for hatred towards groups

| Reform option | Break-even change in population with mental health concerns | Break-even change in people with psychological distress |
|---------------|---|---|
| Option 2 | 0.01% | 248 |
| Option 3 | 0.03% | 895 |

As can be seen, the required change in the numbers of people with psychological distress is very small – particularly in comparison to the number of Australians who have seen a medical professional for mental

⁵⁶ Muhammad Iftikhar ul Husnain, et al ‘The Hidden Toll of Psychological Distress in Australian Adults and Its Impact on Health-Related Quality of Life Measured as Health State Utilities’ (2024) (22) *Applied Health Economics and Health Policy* 583-598.
⁵⁷ Ibid, 591.
⁵⁸ Office of Impact Assessment, ‘Value of statistical life’ (Guidance Note, October 2023).
⁵⁹ ‘First insights from the National Study of Mental Health and Wellbeing, 2020-21’ *Australian Bureau of Statistics* (Web Page, 8 December 2021) <<https://www.abs.gov.au/articles/first-insights-national-study-mental-health-and-wellbeing-2020-21>>.

health issues. The small change required, indicates that both Option 2 and Option 3 appear likely to deliver a net benefit. Given that Option 3 imposes more obligations on digital communications platforms, it appears more likely that Option 3 would deliver a net benefit, and so is the preferred Option.

Physical injury to individuals

Using a break-even approach, it is possible to estimate whether the avoided harm arising from physical injury to individuals would outweigh the costs of reform. For this benefit, there is lack of data in terms of physical injury to specific groups of individuals. Therefore, the cost of violence towards women and their children has been used as a proxy. It appears likely that women are the largest group in Australia experiencing physical harm whether due to misinformation and disinformation or not.

While it is understood that not all harm towards women is caused by or related to misinformation and disinformation, this analysis does not account for the cost of physical injury to other groups that may be due to misinformation and disinformation, such as religious groups, ethnic groups, LGBTQ+ groups etc., so this estimate is still likely to be conservative. Additionally, women may also experience a combination of these harms in that a woman who is also a person of colour, for example, may experience violence that is also related to their race, ethnicity or gender identity/ sexuality but it may not be reported in this way.

Family and Domestic Violence (FDV) is a form of gendered violence that could be increased or incited by gendered misinformation and disinformation. The prevalence and impact of this type of misinformation and disinformation has been increasing and is commonly being spread via social media and other sources of online influence. For example, male supremacist, 'incel' and other harmful gendered content online has been on the rise often with semblance to 'conservatism' or 'family values' so that it is not so conspicuously misogynistic.⁶⁰ Some examples of gendered misinformation and disinformation are:⁶¹

- making harmful claims that a person's gender makes them less capable - for example, posting a false story online that a high-profile woman engineer only got her job by sleeping around, or that a woman of colour who receives a promotion is taking the rightful place of a white man
- using deepfake and generative AI technologies to create fake porn to humiliate a woman – because she has a prominent public role or has rejected someone's sexual advances – and sharing it with her family, professional or friendship networks
- spreading false information that attempts to undermine and reverse the rights of women and LGBTQ+ people – by implying that these rights are coming at the expense of other groups.

These all have the potential to incite more violence and physical harm towards women.

An estimate of the economic cost⁶² of harm to women and their children and the ABS data on the number of FDV cases from 2021-2022,⁶³ allows for estimation of how much physical injury needs to be avoided, in terms of the number of FDV case reductions, in order to make each of the policy reform options "break-even".

The results of this analysis indicate that the required avoided cases of FDV would be 4.5 for Option 2 and 16.2 for Option 3, meaning the impact of the policy reform would only need to be small for the costs of the reform to be offset as shown in Table 14.

⁶⁰ Hanna Hrytsenko, 'Gender misinformation and rape culture' *Heinrich-Boll-Stiftung* (Forum Post, 27 February 2024) <<https://ua.boell.org/en/2024/02/27/gender-misinformation-and-rape-culture>>

⁶¹ 'Gendered violence', *eSafety Commissioner* (Web Page, 2024) <https://www.esafety.gov.au/key-topics/gendered-violence>.

⁶² National Council to Reduce Violence against Women and their Children, *Economic Cost of Violence against Women and Their Children*, (Department of Social Services, 2022).

⁶³ 'Partner violence', *Australian Bureau of Statistics* (Data Release, 22 November 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/partner-violence/latest-release>>.

Table 14: Break-even analysis for physical injury to individuals

| Reform option | Break-even % change in cases of Family and Domestic Violence | Break-even change in number of cases of Family and Domestic Violence |
|---------------|--|--|
| Option 2 | 0.04% | 4.5 |
| Option 3 | 0.13% | 16.2 |

As can be seen, the required change in the numbers of women and children experiencing FDV is very small – particularly in comparison to the estimated number of cases in Australia. The small change required, indicates that both Option 2 and Option 3 appear likely to deliver a net benefit. Given that Option 3 imposes more obligations on digital communications platforms, it appears more likely that Option 3 would deliver a net benefit, and so is the preferred Option.

Electoral processes

From the sections above, the benefit to electoral processes is that (under the reforms) there would be a reduced risk of harm to the operation and integrity of the electoral process.

While the harm identifies local government elections, as well as state and federal elections, the analysis has focussed on state and federal elections. The potential for referendums or plebiscites has also been excluded – although it is noted that one referendum and one plebiscite have been run in the last 10 years.

As there is an increased discussion around the use of misinformation and disinformation by foreign actors to influence election outcomes, this section considers both the likelihood of the harm arising and the scale of the harm.

Likelihood of the election interference arising

In the United Kingdom, the Parliamentary Joint Committee on the National Security Strategy wrote to the then Prime minister (Rishi Sunak) on 23 May, outlining Risks and threats to UK democracy before during and after the 4 July election.⁶⁴

The committee was part way through an inquiry into Defending democracy when the election was called and wrote a letter to set out their views and concerns. The letter sets out that:

In recent years, the UK has experienced a pattern of attempted foreign interference from countries such as China, Russia, Iran and North Korea.

...the UK must be prepared for the possibility of foreign interference during the General Election that will take place on the 4 July 2024.

The letter also notes that legislation has not kept pace with new technology, such as deepfakes, and legal loopholes have emerged.

The European Union has also published on the risk posed by foreign interference in elections and identifies legislative and other measures that are being introduced to reduce the risk of misinformation and disinformation impacting on elections.⁶⁵

⁶⁴ Letter from the Joint Committee on the National Security Strategy to the Prime Minister Rishi Sunak, 23 May 2024

<<https://committees.parliament.uk/publications/45032/documents/223340/default/>>.

⁶⁵ 'Foreign interference: how Parliament is fighting the threat to EU democracy', *European Parliament* (Web Page, 16 May 2024)

<<https://www.europarl.europa.eu/topics/en/article/20240404STO20215/foreign-interference-how-parliament-is-fighting-the-threat-to-eu-democracy>>.

Scale of the harm

The break-even analysis has focussed on the cost of running elections and has considered a scenario that if an election were considered to have been impacted by misinformation or disinformation then the election process would be a wasted effort and there are avenues for an election to be re-run. For example, the Government or Governor / Governor General may seek to re-run the election.

While running (or re-running) an election appears extreme, there is precedent in Australia from November 1975, when the Governor-General sacked Gough Whitlam for refusing to resign or to advise an election after failing to obtain Supply.⁶⁶ This resulted in an election being run despite the sitting Prime Minister's objections.

In each Australian jurisdiction, the disputes around the validity of votes and election outcomes are heard by the Court of Disputed Returns⁶⁷ and at a Commonwealth level these powers are held in the *Commonwealth Electoral Act, 1918*.

In Australia, most jurisdictions provide costs of running an election and this data is set out in Table 15, below. It should be noted that these only focus on the direct costs of running an election and do not consider the political, social and business costs that would arise from instability if an election were genuinely questioned.

Table 15: Published estimates of election costs

| State/Territory | Enrolled voters | Election costs | Data source |
|---------------------------------|-----------------|----------------|--|
| NSW ¹ | 5,618,938 | \$140,304,618 | NSW Electoral Commission |
| Victoria ² | 4,510,408 | \$97,940,000 | Victorian Electoral Commission |
| Queensland ³ | 3,664,340 | \$56,900,000 | Electoral Commission of Queensland |
| Western Australia ⁴ | 1,844,728 | \$26,260,032 | Western Australian Electoral Commission |
| South Australia ⁵ | 1,287,294 | \$27,432,000 | Electoral Commission SA |
| Tasmania | 409,612 | \$8,609,043 | Estimated value based on the average cost for state/ territory elections |
| ACT ⁶ | 318,541 | \$8,002,468 | Elections ACT |
| Northern Territory ⁷ | 153,918 | \$3,731,501 | Northern Territory Electoral Commission |
| Federal ⁸ | 17,807,779 | \$522,390,716 | Australian Electoral Commission |

Source links:

- <https://elections.nsw.gov.au/about-us/reports/election-reports#stateelectionreports>
- <https://www.vec.vic.gov.au/about-us/publications/state-election-reports-and-plans>
- https://www.ecq.qld.gov.au/_data/assets/pdf_file/0028/77338/Budget_2024-25_SDS_Department_of_Justice_and_Attorney-General_ECQ.pdf
- <https://www.elections.wa.gov.au/sites/default/files/content/SGE%202021/2020-2021%20content/Reports/2021%20Election%20Report%20online%20vf.pdf>
- <https://ecsa.sa.gov.au/html/publications/2022-State-and-by-Election-Reports/chapter-7.html>
- https://www.elections.act.gov.au/_data/assets/pdf_file/0009/2472453/2020-Election-report.pdf

⁶⁶ Cathy Madden, 'The dismissal: 45th anniversary', *Parliament of Australia* (Web Page, 11 November 2020) <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/FlagPost/2020/November/The_dismissal>.

⁶⁷ Graeme Orr, *Modernising the Electoral Act: Legislative Form and Judicial Role* (Report prepared for the NSW Electoral Commission, 2011).

7. <https://ntec.nt.gov.au/elections/election-events/legislative-assembly-election-reports2>

8. https://www.aec.gov.au/elections/federal_elections/cost-of-elections.htm

Using the number of enrolled voters in each jurisdiction, the weighted average cost of an election is \$304.13 million. On the basis that most parliaments sit for a term of four years, each enrolled voter votes twice every four years (once in a state or territory election and once in a federal election).

This equates to an election once every two years – and the average cost per year being half of the average cost of an election (so \$152.06 million).

Based on the annual cost of an election, the decrease in risk to an election’s integrity that would offset the costs of reform Option 2 and Option 3 can be estimated.

Table 16: Break even analysis of the decrease in risk of election re-run to offset costs of reform

| | Break even risk of election need | Frequency (years) to break even |
|-----------------|----------------------------------|---------------------------------|
| Option 2 | 3.83% | 26.1 |
| Option 3 | 13.83% | 7.2 |

The table shows that for the benefits to outweigh the costs, Option 2 would need to achieve a 3.83 percent reduction in the chance of an election needing to be re-run. This equates to one election (either state or Federal) every 26.1 years.

As Option 3 imposes higher costs, the reduction in the chance of an election needing to be re-run is also greater and equates to a 13.83 percent reduction or one election every 7.2 years.

While the scenario above focusses on an election result being nullified and the election needing to be re-run, misinformation and disinformation can result in substantial other costs.

Any disputed election would also result in increased business and political instability. While these costs are not readily estimated, it appears likely that the costs would be substantial. An interrupted electoral process would impact international and domestic investment, which would potentially have a lasting impact on investment in Australia, due to a perceived increase in sovereign risk.

Drawing on examples from international jurisdictions, misinformation and disinformation around the 2020 presidential election result resulted in:

- the January 6th storming of the Capitol in Washington DC. The riot resulted in an estimated 250 injured law enforcement officers from numerous agencies and five police officers who were at the Capitol on January 6th died in the days following the riot.⁶⁸
- Numerous defamation cases between election bodies and news agencies with reported values of \$935 million (USD).⁶⁹ The largest single award was for Dominion Voting Systems which settled with Fox news for \$787 million (USD).

Therefore, there will probably be avoided costs that are not able to be valued which come from avoided court action and litigation and associated legal costs arising from a contested result.

⁶⁸ US House of Representatives, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, (House Report 117-663, US Government Publishing Office, 22 December 2022).

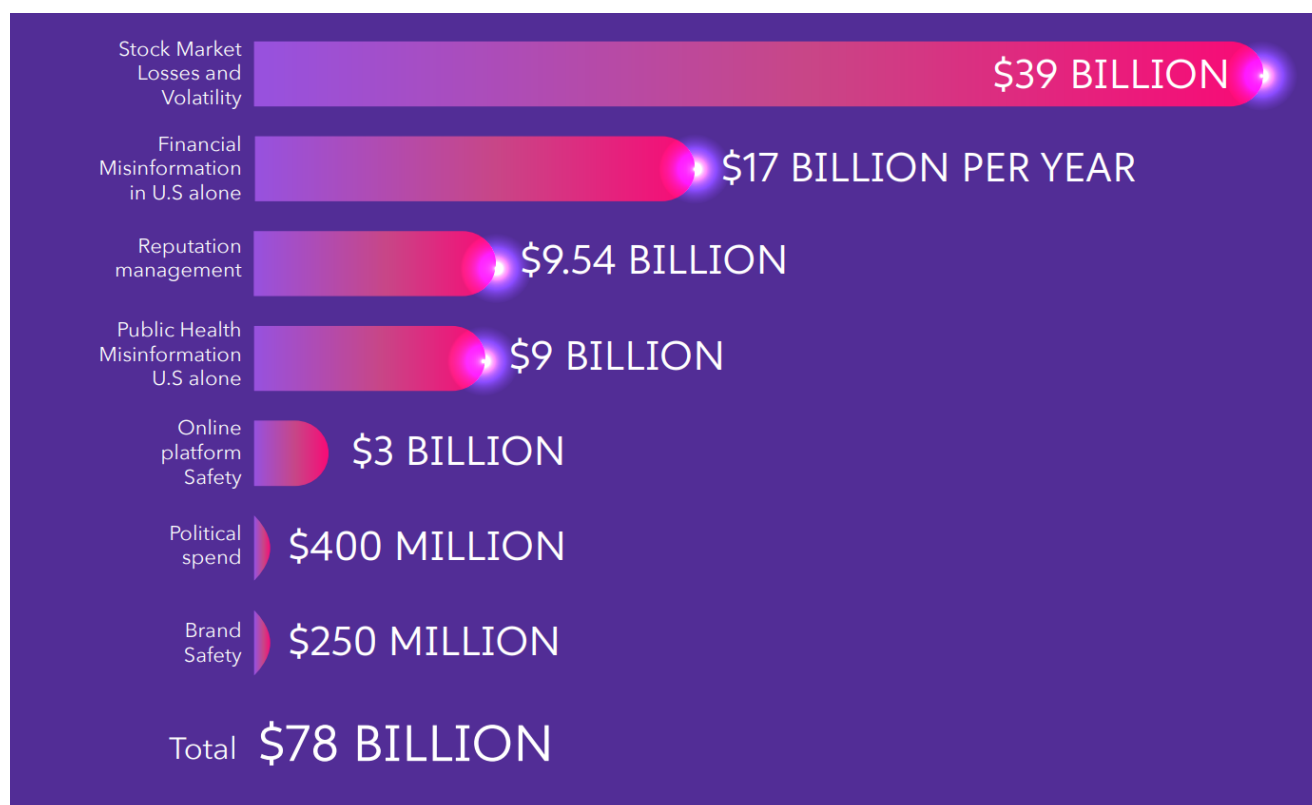
⁶⁹ Alex Woodward, ‘The financial cost of Trump’s election lies is now nearly \$1bn’, *The Independent* (online, 16 December 2023) <<https://www.independent.co.uk/news/world/americas/us-politics/rudy-giuliani-trump-payment-election-b2465288.html>>.

The analysis demonstrates that a discernible change in the risk to an election is needed to offset the costs of reform. Given that most western nations have identified that elections are particularly prone to misinformation and disinformation⁷⁰ – these changes are considered achievable.

Economic harm

As noted above, the impact of economic harm has not been considered quantitatively. However, the scale of the issue was estimated in a 2019 paper by Roberto Cavazos.⁷¹ He estimated that globally the harm arising from misinformation and disinformation equated to around \$78 billion (USD). He also estimated that the impact in the US alone from financial misinformation was around \$17 billion per year – and that this value was almost twice the estimated harm to public health outcomes (\$9 billion per year).

Figure 3: Estimated global harm arising annually from misinformation and disinformation



Source: Cavazos, 2019

Alternative approach – Willingness to pay

There has been a growing awareness around the cost of misinformation and disinformation to the general community. While the analysis above has focussed on the value of the costs to society, an alternative approach is to consider what an individual is WTP for digital wellbeing, including balanced technological usage. WTP studies are an important form of research that relies on the respondent's stated preferences.

Studies on people's WTP to avoid misinformation and disinformation have been undertaken in both Korea and the European Union.

⁷⁰ Carme Colomina, Hector Sanchez Margalef and Richard Youngs, *The impact of disinformation on democratic processes and human rights in the world* (European Union, April 2021) 15.

⁷¹ Roberto Cavazos, *The Economic Cost of Bad Actors on the Internet: Fake News*, (The University of Baltimore for Cheq, 2019).

The findings of a survey of respondents in Korea found that an individual’s WTP for a public fact-checking system was 10,652 KRW (equivalent to \$11.43 AUD in 2024).⁷² It also noted that an individual’s WTP increased if their psychological damage from fake news was high or if their reliance on news during a disaster situation was high.⁷³

A study carried out to determine WTP of Europeans for ‘digital wellbeing’ in 2020 and 2022 identified separate willingness to pay for a breakdown of issues. These issues included ‘fake news and radicalism reduction’. In 2020, the WTP was 2.97 EUR per person per month (equating to \$57.12 AUD per person per year), while in 2022 this figure had increased to 3.28 EUR per month (\$62.98 AUD per person per year).⁷⁴

When considering the benefits required to make either Option 2 or Option 3 break-even, the required WTP of Australian voting adults is less than \$1.18 AUD per person per year (Table 17). Comparing these with the studies carried out elsewhere indicates that Australians WTP for a reduction in misinformation and disinformation would be great enough to ensure that the benefits of the legislation outweigh the costs.

Table 17: Required willingness to pay of Australian adults per year

| Option | Benefits required | Required willingness to pay per person per year | Proportion of Korean estimate | Proportion of German estimate |
|--------|-------------------|---|-------------------------------|-------------------------------|
| 2 | \$5,826,000 | \$0.33 | 2.9% | 0.52% |
| 3 | \$21,026,000 | \$1.18 | 10.3% | 1.87% |

Source: Marsden Jacob analysis

Care is required in relying on WTP studies from international jurisdictions. Aside from consideration of survey design and scale, it is necessary to consider whether the societies are similar enough to apply the values from another country to Australia. However, in this instance, it is clear that the break-even values required for Australia are a small percentage of the estimated values produced from two other OECD countries.

Results

The economic analysis used two approaches to demonstrate that while the benefits of the proposed reforms are difficult to estimate quantitatively, they are expected to outweigh the costs significantly.

Break-even analysis

While the economic analysis has focussed on a fraction of the benefits that would arise if the reforms were effective, the break-even analysis clearly demonstrates that the value of the avoided harms would outweigh the costs. The analysis identified that only a small improvement in one individual form of harm is necessary to offset the costs.

Given the small changes in avoided harms for both Option 2 and Option 3, Option 3 is the preferred Option.

Option 3 provides ACMA with a more active role in encouraging transparency on misinformation and disinformation and imposes more obligations on digital communications platforms. While this results in

⁷² Hanseul Jo et al ‘Estimating cost of fighting against fake news during catastrophic situations’, (2022) (66) *Telematics and Informatics* 1, 7.

⁷³ Ibid, 5.

⁷⁴ Areej Babiker et al ‘Estimating the growth in willingness to pay for digital wellbeing services on social media: a comparative analysis’, (2024) (10) *Heliyon* 1, 7.

higher costs, it is more likely to be effective in achieving the reform objectives and so therefore appears likely to deliver the largest net benefit – making it the preferred Option.

Willingness to pay

Two recent WTP studies clearly demonstrated that the community in each country surveyed is willing to pay significantly more than the required annual cost of the proposed reforms. Based on the analysis, Australians' willingness to pay for a reduction in misinformation and disinformation would be great enough to ensure that the benefits of the legislation outweigh the cost.

Option 3 provides ACMA with a more active role in encouraging transparency on misinformation and disinformation and imposes more obligations on digital communication platforms. While this results in higher costs, it is more likely to be effective in achieving the reform objectives and so therefore appears likely to deliver the largest net benefit – making it the preferred Option.

Sensitivity analysis

As the costs to platform providers are estimated to be flat, and the benefits are assumed to be an annuity that commences in year 2, changing the analysis period (such as 10/15/20 years) and the discount rates (such as 3% /7% /10%) do not have a significant impact on the breakeven points.

The impact of increasing or decreasing the industry costs by 20 percent and 50 percent was considered. It was noted that costs for industry may be higher than estimated if the number of digital communications platform providers impacted were estimated incorrectly, or if the cost per platform provider was estimated incorrectly. Once again, these sensitivities do not have a significant impact on the breakeven points.

Distribution analysis

While the analysis does not consider the distribution of the costs and benefits quantitatively, the costs only fall to two parties (Commonwealth government and digital communications platform providers). In contrast the benefits fall to all levels of government and to a broad range of business and industry as well as to the broader community.

Table 18: Qualitative analysis of the costs and benefits

| Stakeholder group | Relevant costs | Relevant benefits |
|---|----------------|-------------------|
| Commonwealth government | ✓ | ✓ |
| State and local governments | | ✓ |
| Digital communications platform providers | ✓ | |
| Other business and industry | | ✓ |
| Consumer and the Community | | ✓ |

Within consumers and the community, it appears likely that the benefits from reductions in misinformation and disinformation will fall most significantly to those that obtain their information from a limited range of sources. This would deliver the largest benefit to disadvantaged groups such as:

- People from a low socio-economic background
- People in different age groups
- First Nations peoples
- People with a disability
- Community members from Culturally or Linguistically diverse backgrounds (also referred to as CALD).

Regulatory burden

Regulatory Burden Measurement utilises the same information as the cost benefit analysis but focusses only on the costs that fall to businesses (including government-owned corporations), community organisations and individuals.

Regulatory Burden Measurement was undertaken in line with Australian Government guidance⁷⁵ and identifies the average annual change in regulatory costs is measured against ‘business as usual’ costs. The framework includes consideration of regulatory compliance costs (both administrative costs and substantive compliance costs) as well as delay costs. For this reform, no delay costs were identified and so the analysis focussed on the likely compliance costs.

As set out in Table 19, the Regulatory burden estimate for Option 2 is \$3.0975 million and for Option 3 is \$16.275 million.

Table 19: Average annual regulatory costs (from business as usual)

| | Business Change in costs (\$ million) | Community organisations | Individuals | Total change in costs (\$ million) |
|----------|---------------------------------------|-------------------------|-------------|------------------------------------|
| Option 2 | \$3.0975 | 0.000 | 0.000 | \$3.0975 |
| Option 3 | \$16.275 | 0.000 | 0.000 | \$16.275 |

⁷⁵ ‘Regulatory Burden Measurement Framework’, (Office of Impact Analysis, 6 February 2024) <<https://oia.pmc.gov.au/resources/guidance-assessing-impacts/regulatory-burden-measurement-framework>>.

Consultation

The Department has undertaken multiple rounds of consultation over an extended period.

Consultation has been done in three main phases.

1. **Exposure Draft Bill Public Consultation 25 June – 20 August 2023.** The Exposure Draft Bill was published on the Department's website⁷⁶ and the public was invited to make submissions. The Government received over 24,000 responses, including 2,481 public submissions. The Department also held roundtable meetings with several stakeholder groups (see below). The Exposure Draft Bill contained the information gathering, record keeping rules, codes and standards. Feedback from this consultation was particularly focused on freedom of speech.

Subsequent to this consultation, the Department published all the public submissions and considered changes to the Bill aimed at increasing protections for freedom of speech, boosting transparency and empowering Australian users.

2. **Conceptual Targeted Consultation 17-24 April 2024** (also referred to as stage one targeted consultation). The Department and Minister met with members and representatives of industry, civil rights organisations and religious groups (details below) to outline proposed amendments. These amendments included increased protections for freedom of speech, transparency reporting obligations, risk management plan obligations, powers for the ACMA to require internal dispute resolution, and a third-party data access scheme (which did not progress). Feedback from this consultation was mostly positive, with industry proposing additional changes to the platforms in scope.

Subsequent to this consultation, the Department further refined the Bill in line with the changes (except third-party data access) and made clarifications to which platforms were in scope of the Bill.

3. **Near Final Bill Targeted Consultation July 2024** (also referred to as stage two targeted consultation). The Department provided a near final Bill to members and representatives of key industry and civil rights organisations. These stakeholders were invited to review the Bill and provide technical feedback (e.g. if certain provisions were unworkable). Feedback produced minimal redline issues, and the Department sought to amend the Bill where appropriate.

Several stakeholders questioned how certain provisions of the Bill would operate. To address this feedback further, explanations have been included in the Explanatory Memorandum where relevant, noting the Explanatory Memorandum was not available for consultation at the time.

In total, the Department has undertaken a total of over 45 targeted briefings and consultations with a broad range of stakeholders since June 2023 and a range of groups were met with multiple times. These included:

- DIGI voluntary code signatories
- Non-signatory platforms
- Media, academia, fact-checking organisations and advocacy groups
- Government stakeholders
- Advocacy groups such as the Law Council of Australia, the Australian Human Rights Commission
- Parliamentarians.

⁷⁶ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Aust), (n4).

Further consultation

The Department does not anticipate any further consultation before the Bill's introduction into Parliament.

Key concerns in the consultation

Key themes raised in consultation responses are set out in Table 20. These concerns have been incorporated into the definition of the problems and the design of the reform options set out in this assessment.

Table 20: Key concerns and themes from the public consultation in 2023

| | |
|---|---|
| Definitions of 'misinformation' and 'disinformation' (including 'serious harm') | <p>There was a broad consensus from major stakeholders that the initial definitions for 'misinformation' and 'disinformation' (including 'serious harm') are too broad and lack clarity.</p> <p>This could make it difficult for digital communications platform services and the ACMA to determine whether misinformation and disinformation has occurred on those services, leading to the over-censorship of content.</p> |
| Types of content to be 'excluded content for misinformation purposes' | <p>There were a range of views as to the types of content that should be included or excluded in the list of 'excluded content for misinformation purposes'.</p> <p>For professional news content, cultural groups suggested that this type of content should not be excluded. On the other hand, broadcasters suggested that all content produced by a news source should be excluded. This is one of the most two-sided aspects of feedback.</p> <p>For content produced by or for an accredited educational institution (or foreign equivalent), academia and advocacy groups suggested that the exclusion does not capture the full range of educational institutions (e.g. research institutes and think-tanks). Additionally, there were concerns that the exclusion could inadvertently silence academic debate, as responses to this type of content are not excluded.</p> <p>For authorised government content, a range of stakeholders suggested that there was a lack of clarity around what the exclusion was intended to include. Additionally, stakeholders were concerned that this exclusion could result in the government becoming a single source of 'truth', and that criticism of the government is not excluded.</p> <p>For entertainment, parody or satire, there was not a significant level of commentary. Several religious groups proposed an exclusion for religious content.</p> |
| Transparency and accountability mechanisms | <p>There was a broad consensus from major stakeholders that there should be greater transparency and oversight around the ACMA's decision-making processes, particularly in relation to the development and enforcement of Codes and Standards.</p> <p>Some argued that there should be greater transparency and oversight around digital communications platform services' decision-making processes, particularly in relation to their treatment of misinformation and disinformation on their services.</p> |
| Penalties and enforcement mechanisms | <p>Digital communications platforms, academia and advocacy groups suggested that the significant penalties in the Exposure Draft Bill could result in digital communications platform services and individuals becoming risk-averse and over-censoring content on those services.</p> |

The preferred option

Identifying the preferred option

To identify a preferred Option, a decision rule to ascertain the option that best meets the objectives of government, includes the outcomes of the cost-benefit analysis and the qualitative factors received through consultation feedback.

Option 1

Option 1 retains the status quo and will not fully address the problems associated with the threat of misinformation and disinformation. The status quo will continue to maintain existing voluntary codes that are slow to respond to emerging trends and inconsistent in application across providers. This will not involve any new regulatory cost to stakeholders nor result in a change to the estimated net benefit. Stakeholders identified the need for revision and reforms to the status quo and Option 1 would not address these key concerns. Option 1 is not preferred.

Option 2

Option 2 will provide the ACMA with additional information gathering, code registration and standard making powers and have some success in achieving the reform objectives, given the small changes in avoided harms required to achieve a net benefit. The costs of implementing this Option will be lower than those of Option 3, although the net benefit delivered would also be less. A key concern from consultation was on transparency and accountability mechanisms which this Option would not address. Option 2 is not preferred.

Option 3

Option 3 provides ACMA with a more active role in encouraging transparency on misinformation and disinformation and imposes more obligations on digital communications platforms. While this results in higher costs, the Impact Analysis identifies that it is more likely to be effective in achieving the reform objectives and appears likely to deliver the largest net benefit. Option 3 will address most of the key concerns raised by stakeholders – making it the preferred Option.

The preferred option

Based on the Impact Analysis' decision rule, Option 3 is the preferred Option. While the costs of Option 3 are higher, it is considered it will be more effective in achieving the reform objectives. For this reason, is appears likely to deliver the largest net benefit.

Cost impacts on industry should only arise where the new rules differ from those already in place. These costs are likely to be mitigated by similar requirements in place in Europe and other OECD countries.

Deferring the implementation of regulatory reforms would result in significant longer time before improvements in the management of misinformation and disinformation are in place, not addressing the urgency of the problem. Past experience indicates a significant risk of partial and inconsistent approaches to misinformation and disinformation.

The extensive consultation undertaken also identified that maintaining the current voluntary approach is unlikely to sufficiently address misinformation and disinformation, posing an unacceptable level of harm due to the lack of clear rules for addressing this growing problem.

Implementation and evaluation

Barriers and risks

The Department considered the risks that could prevent the preferred option from meeting its stated objectives, and identified strategies to address these barriers and mitigate these risks. These are set out below.

The Department identified three broad risk categories that would prevent **Option 3** from achieving the costs and benefits estimated in this analysis:

1. Benefits are not achieved as the regulation is not effective in controlling misinformation and disinformation
2. Costs are higher than estimated as the regulation is found to be overly burdensome (imposes higher costs on businesses)
3. Costs are higher than estimated as the regulation is found to require or encourage over-censorship of content
4. Implementation risk – arising from some platform providers being slow to achieve compliance.

Following the risk management process described in *AS/NZS ISO 31000:2018 Risk Management – Principles and Guidelines*, the likelihood and consequence of each of these risks was considered.

The consequence of risks 1 to 3 was identified as Moderate to Major in that it would prevent the benefits of the reforms from being realised – but the damage would be unlikely to result in deaths and would be reversible. The consequence of risk 4 (implementation risk) was considered to be minor to moderate given the short-term nature.

Each of the risks were considered to be unlikely to arise, given that the proposed reforms are drawn in part on reforms in other jurisdictions. On a risk matrix, this would place risks 1 to 3 as being moderate to high – as shown in Figure 4.

Figure 4: Likelihood and consequence risk rating matrix

| Risk Matrix | | | | | |
|----------------|---------------|---------------|---------------|---------------|---------------|
| Likelihood | Consequence | | | | |
| | Insignificant | Minor | Moderate | Major | Catastrophic |
| Almost Certain | High 11 | High 16 | Extreme 20 | Extreme 23 | Extreme 25 |
| Likely | Moderate 7 | High 12 | High 17 | Extreme 21 | Extreme 24 |
| Possible | Low 4 | Moderate 8 | High 13 | Extreme 18 | Extreme 22 |
| Unlikely | Low 2 | Low 5 | Moderate 9 | High 14 | Extreme 19 |
| Rare | Low 1 | Low 3 | Moderate 6 | High 10 | High 15 |

Source: www.climatechangeinaustralia.gov.au/en/projects/esci/risk-assessment/evaluate-all-risks/

Strategies to mitigate and manage the most significant risks are set out in Table 21, below. The management of risk 4 (implementation risk) is considered at the end of this section.

Table 21: Strategies to mitigate and manage each of the risk categories

| Risk | Strategies to mitigate these risks |
|--|---|
| Regulation is not effective | The ACMA will monitor the effectiveness of the regulation and the effectiveness of the legislative framework will be considered as part of the triennial review of the Act. |
| Regulation is overly burdensome | <p>The ACMA can adjust the level of regulation (either introduce additional requirements or provide exemptions to some providers for particular requirements) through the development of digital platform rules.</p> <p>This ability will enable the ACMA to fine tune the regulatory requirements and ensure the regulations are well targeted, effective and not overly burdensome.</p> |
| Regulation requires or encourages over-censorship | <p>The ACMA will continue to work with industry through the development and implementation of the reforms. If digital communications platform providers indicate that the legislation can only be effectively complied with by censoring a large number of posts and articles, then the ACMA will determine whether this can be overcome through the use of digital platform rules, or if more significant changes are required.</p> <p>The effectiveness of the legislative framework will be considered as part of the triennial review of the Act.</p> |

Potential of ‘over-censorship’

The Bill has been drafted in such a manner that any limitation on freedom of expression required by the Bill would be necessary and proportionate to the achievement of the legitimate objective of protecting Australians from serious harm. The Statement of Compatibility with Human Rights and notes on clauses in the Explanatory Memorandum to the Bill explain in detail the multiple guardrails to ensure that, to the extent that there is any burden on the freedom of political communication, this must be justified.

Although the Bill does not require ‘over-censorship’, it is possible that digital communications platform providers could decide, in response to the Bill, to operate their platforms in a manner that goes beyond what the Bill requires of them. As operators of digital platforms, digital communications platform providers already have the ability to govern the type of content on their platform.

Implementation risks

A risk specific to implementation is in the compliance of platforms meeting the requirements of the new legislation. The civil penalties for non-compliance in the Bill are significant, so should incentivise compliance and make clear the Government’s expectations on platform providers operating in Australia. Users of platforms that are not compliant with the new measures will continue to experience negative effects. Digital communications platform providers have been heavily consulted in the legislative development process and maintain working groups with both the Department and the ACMA. This allows for updated guidance and support to platforms to be communicated with platforms in a frequent and timely way, promoting platform compliance at all stages of implementation of the new legislation.

Commencement timings

It is difficult to predict Parliamentary timings. The obligations in the Transparency provisions (i.e. Option 3) would have a 6-month delay in commencement from the day after Royal Assent, to enable digital communications platform providers to prepare for these new legislative obligations.

Planned implementation process and timing

The potential risks associated with implementation include opposition from some sectors of the industry and the complexity of implementing effective regulations in a rapidly evolving technological landscape. The possibility of industry opposition exists, given concerns about additional regulatory burdens and operational flexibility. The consequences could involve resistance to compliance, affecting the success of the reforms.

To mitigate industry opposition, the ACMA has, and will, employ a collaborative approach, engaging in regular and transparent communication to address stakeholder concerns constructively.

The planned implementation timings (after ascension) for each of the key regulatory requirements of the preferred option (Option 3) are set out in Table 22, below.

Table 22: Planned commencement schedule

| Measure | Start |
|--|-------------------------------|
| Information gathering power | Day after Royal Assent |
| Record keeping and reporting digital platform rule power | Day after Royal Assent |
| Transparency publications requirement for: <ul style="list-style-type: none">- Policy or policy approach relating to misinformation and disinformation- Media literacy plan requirement- Risk assessment | Six months after Royal Assent |
| Complaints and dispute handling scheme digital platform rule power | Six months after Royal Assent |
| Risk management plan digital platform rule power | Six months after Royal Assent |
| Code registration powers | Day after Royal Assent |
| Standard making powers | Day after Royal Assent |

Governance arrangements

The ACMA will oversee the implementation of measures within the Bill. As the ACMA is an independent statutory authority, the Department is unable to pre-empt likely dates for the implementation of measures under the Bill. These decisions would be made by the ACMA.

Transitional issues and provisions

As outlined above, the Bill will give industry 6 months from the day after Royal Assent to comply with the transparency obligations.

Evaluation process and timings

The post-implementation phase will involve ongoing collaboration between the ACMA and relevant stakeholders.

The Government will monitor and evaluate the implementation of the regulatory reforms to ensure it aligns with the objectives and gauge its effectiveness. This evaluation will be an integral part of the ACMA's ongoing regulatory reform, monitoring and compliance activities.

The Bill includes a requirement for triennial reviews to be conducted of the framework, with particular attention given to the framework's burden on freedom of speech.

It is planned that the evaluation process will assist to assess and refine the benefits for future reforms.

Objectives of evaluation

The Government will monitor and evaluate the implementation of the regulatory reforms to ensure it aligns with the objectives and gauge its effectiveness. This evaluation will be an integral part of the ACMA's ongoing regulatory reform, monitoring and compliance activities.

Key objectives of evaluation are:

- to monitor the progress towards increased transparency and accountability
- to achieve consistent information integrity requirements for all platforms
- support Australians to make informed choices about the online content they access and their engagement with platforms.

How evaluation will occur

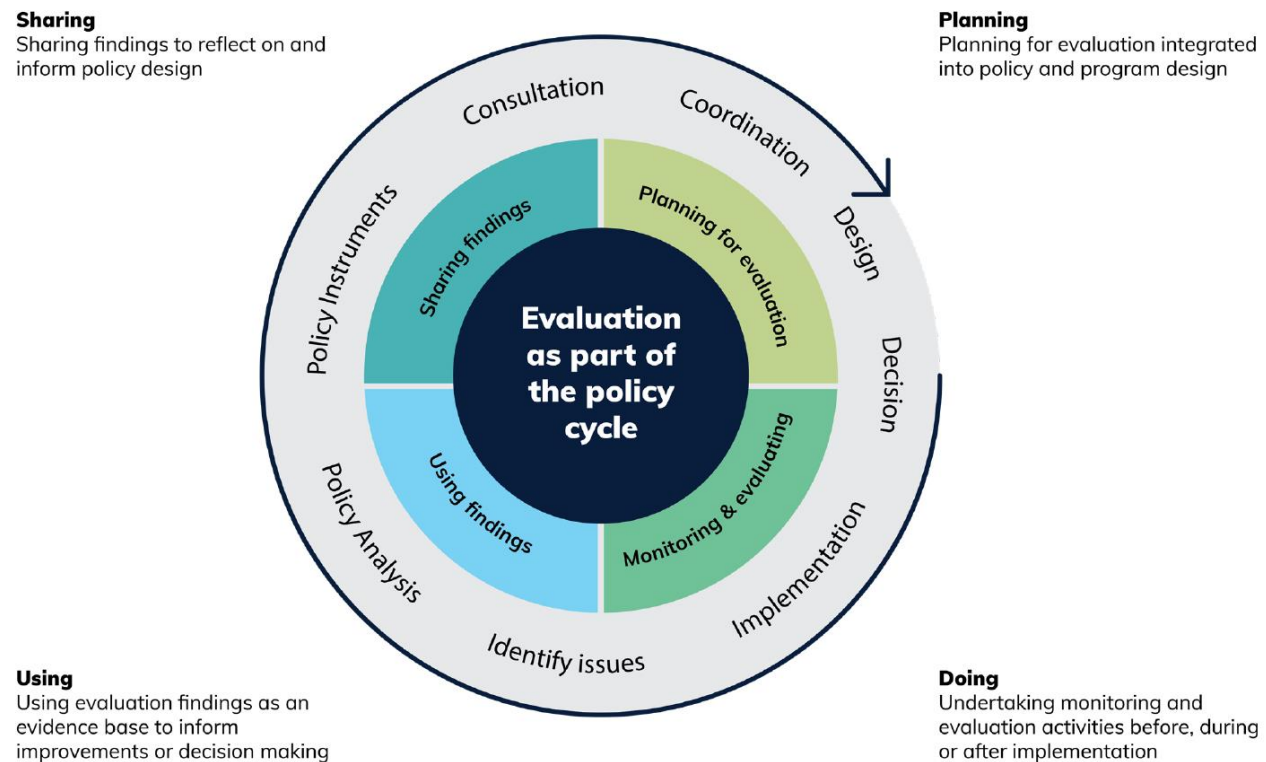
As noted earlier, the Bill includes a requirement for triennial reviews to be conducted of the framework, with particular attention given to the framework's burden on freedom of speech. As regulator for this legislation, the ACMA will be best placed to conduct evaluation on the implementation and effectiveness of achieving the Government's objectives. Evaluation will occur through informal and formal consultation with stakeholders in existing working groups, complaints handling and other monitoring processes currently used by the ACMA. These results will be published in annual reporting. Annual reporting remains the appropriate place for these metrics as it ensures stakeholders have access to key information that is easily accessible and referrable in future engagements with the ACMA and its relevancy to the whole of the ACMA's and Government's objectives.

Where action is required to respond to evaluation feedback, the ACMA will have the power to amend or create instruments under the legislation and maintain responsiveness to achieving the objectives of Government. These methods are appropriate in evaluating the objectives of this policy by using existing relationships and methods for stakeholders and ensuring that data is current and relevant to the ACMA's existing objectives reducing any possible increased consultation burden on stakeholders.

It is planned that the evaluation process will assist to assess and refine the benefits for future reforms.

The evaluation approach will follow the framework set out in the Evaluation Strategy 2024–27 published by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, and summarised in Figure 5: Evaluation as part of the policy cycle, below.

Figure 5: Evaluation as part of the policy cycle



Source: www.infrastructure.gov.au/sites/default/files/documents/ditrdca-evaluation-strategy-2024-2027.pdf

It is envisaged that the initial evaluation of the reforms will utilise (and if necessary, refine) the program logic set out on page 24 of this Impact Analysis to develop indicators of success.

Based on this Program logic, it is envisaged that initial measures of success will be based on:

- intermediate outputs such as platform processes, supported with transparent record keeping and regular and consistent reporting
- outputs such as:
 - information on systems and processes
 - measures of consistency across platforms
 - data from the ACMA on codes and standards implemented
 - data on users accessing data on online content and engagement with platforms on moderation.

For each of the chosen indicators, the initial review will set out the target measures to ensure that each of the indicators are Specific, Measurable, Achievable, Relevant, and Time-Bound.

The triennial reviews will enable the development of a robust Monitoring and Evaluation plan for the reforms that will facilitate continuous improvement of the systems and correction if the reforms do not remain relevant, effective and well targeted.

Annex A: Businesses impacted

It is intended that the new misinformation and disinformation powers would apply to all digital communications platforms offered in Australia. However, it is anticipated that the ACMA would employ a risk-based approach to regulation to require platforms that pose a credible risk of spreading seriously harmful misinformation and disinformation comply with the Act.

The ACMA's graduated approach to compliance and enforcement is set out in the ACMA's general Compliance and Enforcement Policy. The ACMA adopts a strategic risk-based approach to compliance and enforcement. The decision as to what, if any, enforcement action should be taken by the ACMA is made in the light of the facts of the matter and having regard to the objects of the legislation.

The Department has identified 48 digital communications platform providers it views *may* be of interest to the ACMA in terms of regulating misinformation and disinformation on digital communications platforms. This includes 34 small platform providers, 10 large platform providers, and 4 very large platform providers. It is important to note that the ACMA may choose to use its powers on a smaller, or larger cohort of platforms, or different cohorts altogether.

As the digital communications platforms market has become a mature market and there are high barriers to entry for platforms to become popular, the number of platforms is not anticipated to change significantly over a 10-year period.

This list is an estimation of which platform providers the Department considers that ACMA *could* be interested in for the purposes of estimating regulatory costs to industry as a whole. This Impact Analysis does not aim to pre-empt any regulatory decisions by the ACMA, or any guidance that may be produced by the ACMA.

Annex B: Industry cost calculations

NOTE: The indicative regulatory costs assume the ACMA could choose to require identified platforms of the nature in Annex A to comply with the Act. Costs to industry could vary based upon the ACMA's regulatory decision making which this Impact Analysis does not aim to pre-empt.

Industry salary costs

Industry salary costs were based on research for similar roles in similar organisations and estimates of staffing requirements to generate an activity-based costing approach.

Industry stakeholders were approached to review the estimates generated, but indicated they were not able to review the costing estimates until the final form of the legislation was reviewed.

The take-home salary per additional full-time equivalent staff member was estimated to be \$150,000 per year.⁷⁷ Additional non-wage labour costs were included in line with the Office of Impact Analysis guidance at a rate of 75 percent - giving a total annual cost of \$262,500 per full-time equivalent staff member.

Option 2

The estimated regulatory costs for Option 2 are set out in Table 23, below.

Table 23: Option 2 Regulatory cost estimates based on activity-based costing

| Business Size | Number of businesses affected | FTE staff requirement per business | Estimated regulatory impact per year | Notes on estimated additional costs per platform provider |
|-------------------------------------|-------------------------------|------------------------------------|--------------------------------------|--|
| INFORMATION GATHERING POWERS | | | | |
| Small/very low risk | 34 | 0.2 | \$1,785,000 | Assumes 0.2 additional FTE required to respond to one information gathering request per year. |
| Large | 10 | 0.5 | \$1,312,500 | Assumes 0.5 additional FTE required to respond to one information gathering request per year. |
| Very large | 4 | 0 | \$0 | Assumes all very large platform providers already have sufficient government relations staff to respond to two information gathering request per year. |
| ANNUAL TOTAL FOR OPTION 2 | | | \$3,097,500 | |

Note: Code registration powers, standard making powers and digital platform rules are excluded from the Impact Analysis given that the detail will be determined by the independent regulator in consultation with industry and the public.

⁷⁷ Internet research based on 'Glassdoor' for an IT manager, (Glassdoor, 11 July 2024) <https://www.glassdoor.com.au/Salaries/it-manager-salary-SRCH_KO0,10.htm>

Option 3

The estimated regulatory costs for Option 3 are set out in Table 24 below.

Table 24: Option 3 Regulatory cost estimates based on activity-based costing

| Business Size | Number of businesses affected | FTE staff requirement per business | Estimated regulatory impact per year | Notes on estimated additional costs per platform provider |
|---|-------------------------------|------------------------------------|--------------------------------------|--|
| OPTION 2 COSTS | | | | |
| Total | | | \$3,097,500 | |
| TRANSPARENCY (PUBLICATION) | | | | |
| Small/very low risk | 34 | 0.2 | \$1,785,000 | Assumes 0.2 additional FTE required to produce one transparency report per year. |
| Large | 10 | 0.5 | \$1,312,500 | Assumes 0.5 additional FTE to produce one transparency report per year. |
| Very large | 4 | 0 | \$0 | All identified very large platform providers already do transparency reporting under the voluntary code. |
| Total | | | \$3,097,500 | |
| MISINFORMATION AND DISINFORMATION POLICY | | | | |
| Small/very low risk | 34 | 0.2 | \$1,785,000 | Assumes 0.2 additional FTE required to produce and maintain a misinformation and disinformation policy. |
| Large | 10 | 0 | \$0 | All identified large platform providers already have a misinformation and disinformation policy. |
| Very large | 4 | 0 | \$0 | All identified very large platform providers already have a misinformation and disinformation policy. |
| Total | | | \$1,785,000 | |
| RISK ASSESSMENT | | | | |
| Small/very low risk | 34 | 0.2 | \$1,785,000 | Assumes 0.2 additional FTE required to assess risk |
| Large | 10 | 0.5 | \$1,312,500 | Assumes 0.5 additional FTE required to assess risk |
| Very large | 4 | 1 | \$1,050,000 | Assumes 1 additional FTE required to assess risk |
| Total | | | \$4,147,500 | |
| MEDIA LITERACY PLAN | | | | |
| Small/very low risk | 34 | 0.2 | \$1,785,000 | Assumes 0.2 additional FTE required to produce and update media literacy content. |
| Large | 10 | 0.5 | \$1,312,500 | Assumes 0.5 additional FTE required to produce and update media literacy content. |
| Very large | 4 | 1 | \$1,050,000 | Assumes 1 additional FTE required to produce and update media literacy content. |
| Total | | | \$4,147,500 | |
| ANNUAL TOTAL FOR OPTION 3 | | | \$16,275,000 | |

Note: Code registration powers, standard making powers and digital platform rules are excluded from the Impact Analysis given that the detail will be determined by the independent regulator in consultation with industry and the public.