

# **Australian Communications and Media Authority**

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## **Written Questions on Notice from Senator Karen Grogan**

### **Question**

1. Should the bill proceed, how would ACMA assess seriousness of harm? Would it use standardised assessments?

### **Response**

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

The ACMA's role would be to assess the effectiveness of the systems and processes that digital platforms have in place for responding to that material.

### **Question**

2. What specific criteria would ACMA use to determine what constitutes 'misinformation' and 'disinformation' and how would this criteria be applied consistently? How would the process and the results of that process be communicated to the public?

### **Response**

The ACMA would not determine what constitutes misinformation or disinformation. Digital communications platforms would continue to be responsible for making decisions about whether material on their services is misinformation or disinformation. The Bill requires platforms to publish transparency information (cls.17) and gives the ACMA information-gathering powers (Division 3) that would support improved transparency about how platforms decide what constitutes misinformation and disinformation and how they apply their policies (like content moderation) to address that material.

### **Question**

3. Some submitters have suggested that an analysis of the effectiveness of the bill and its impact on freedom of expression should be undertaken by the ACMA within 12 months of the bill's operation and for the ACMA's annual reports to contain this analysis every year after. Would this be achievable for the ACMA? Can the ACMA foresee any issues with this suggestion?

### **Response**

It would be achievable for the ACMA to report on the Bill's operation, its effectiveness and its impact on freedom of expression within the first 12 months, and annually thereafter. The ACMA is likely to have limited data to support analysis in the first 12 months of the Bill's operation. As implementation progresses (e.g., compliance and enforcement of Division 2 obligations is regularised, and more information-gathering powers are used), the quality of data will support better analysis on the effectiveness of the Bill and any impact on freedom of expression.

### **Question**

4. Some submitters have called for regulating data access for researchers. Was access for researchers contemplated as part of the bill? Should access for Australian research purposes be included?

## **Response**

Questions about matters considered in the development of the Bill should be directed to the Department.

The Bill includes a requirement for the Minister to undertake a triennial review of the operation of Part 2 of the Bill. The first review of the Bill must consider the need for a scheme requiring digital platforms to give accredited independent researchers access to data relating to misinformation and disinformation on their services.

## **Question**

5. What challenges are there with providing this data access to researchers?

## **Response**

Questions about policy should be directed to the Department. However, the ACMA is monitoring the implementation of the European Union's data access scheme for researchers established under the Digital Services Act 2022.

Establishing an effective data access scheme is a complex endeavour. Any scheme would need to: establish criteria for researchers to participate in the scheme; define the scope of the digital communication platform providers required to comply with a scheme; establish the nature and purpose of research that the data could be used for; ensure robust arrangements were in place to safeguard data security and end-user privacy, and consider arrangements for accreditation, appeals or dispute mechanisms for researchers, digital platforms or other affected parties including whether to appoint any third parties to oversee some of these roles.

## **Question**

6. What specific measures will be taken to ensure transparency and accountability in ACMA's decision-making process?

## **Response**

The ACMA welcomes transparency and accountability for its decision-making under the Bill. Under the Bill :

- The ACMA's powers to develop digital platform rules, approve codes or make standards under the Bill are all subject to parliamentary scrutiny and disallowance.
- Clause 69 of the Bill requires the ACMA to give an annual report on the exercise of its powers under the Bill to the Minister. This report would provide details on the use of the ACMA's powers during the financial year, and comment on whether misinformation codes or standards are necessary. The Minister must present the report to the Parliament and the ACMA must also cause a copy of this report to be published on its website.
- Clause 70 of the Bill requires that triennial reviews will be conducted on the operation of the Bill.

These measures complement the current mechanisms which provide transparency and accountability of the ACMA's regulatory activities.

- The ACMA publishes an annual report and annual performance statement under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) about its performance for the year.
- The ACMA has published its compliance and enforcement policy<sup>1</sup> which sets out its broad approach to compliance and enforcement.

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<sup>1</sup> Available at <https://www.acma.gov.au/compliance-and-enforcement-policy>

## **Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation Bill) 2024 – Answers to Questions on Notice**

- The ACMA publishes a set of annual compliance priorities<sup>2</sup> which outline the key areas we will target because they can cause harm or have a negative impact on the community.
- The ACMA regularly publishes investigations reports where it has found contravening conduct.
- There is ongoing parliamentary scrutiny of the ACMA's decision-making via committee and senate estimates processes.

### **Question**

7. Should the bill proceed, there have been calls for transparency including the release of reports associated with ACMA's activities regarding misinformation and disinformation. What is your view of the level of public information that would be provided?

### **Response**

The ACMA supports strengthened transparency and accountability on digital communications platforms in Australia through the Bill.

Under clause 38 of the Bill the ACMA may publish information obtained under Division 3 of the Bill, information obtained in relation to complaints and dispute handling (Division 2, Subdivision D) and statements from platforms explaining why transparency information (under cls.17) was not made public.

The ACMA intends to publish as much of the information we receive under our powers as possible in recognition of the need for transparency and accountability. There are some limited circumstances where the ACMA will not be able to publish information – for example, when publication would benefit bad actors or when we are satisfied that information we receive is 'protected information' (cls. 39)

### **Question**

8. What safeguards are in place to ensure that the bill meets its objectives while not infringing on legitimate freedom of expression?

### **Response**

The Department is best placed to respond to questions of how the Bill meets its objectives.

In terms of the powers given to the ACMA, the Bill is focused on supporting the ACMA to use our powers to improve platform transparency and accountability around the systems and processes they have in place to address seriously harmful misinformation and disinformation, and to comment on systemic issues (cls.11(f)). The Bill requires that the use of our actions respect freedom of expression (cls.11(e)).

There is no provision in the Bill that would allow the ACMA to take down content, ban accounts or make content moderation decisions. Under the Bill, the removal of content or blocking of accounts is limited to when it relates to disinformation that involves inauthentic behaviour, and when obligations on platforms are set out in codes or standards (which are subject to parliamentary disallowance).

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<sup>2</sup> Available at <https://www.acma.gov.au/compliance-priorities>

**Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation Bill) 2024 – Answers to Questions on Notice**

**Question**

9. How will the Department and the ACMA consider the impact of AI technology as part of the regulatory framework aimed at addressing misinformation and disinformation?

**Response**

Many digital communications platforms that are captured by the scope of the Bill use algorithms, AI and generative AI in the operation of their services. Under the Bill, the ACMA would be able to make rules and seek information about how these platforms use AI in relation to misinformation or disinformation.

Generative AI technologies have the potential to exacerbate the creation and spread of seriously harmful misinformation and disinformation. The Bill would allow the ACMA to respond when this occurs. For example, the ACMA could use record keeping rules (cls.30) to require that sections of the digital platform industry make, retain and report on data about how AI-generated misinformation and disinformation is being addressed. Platforms could also be required to consider AI-related risks on their services (under rules provided for in cls.19).

Digital communications platforms may also elect to use AI to manage misinformation and disinformation on their services. The ACMA could use powers under the Bill to set rules that establish minimum standards around the role of AI in complaints handling (cls.25). The ACMA could also approve codes or make standards that include obligations around the use of technologies (like AI) to prevent and respond to misinformation and disinformation on platforms (cls.44(3)(b)).