

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Inquiry Question on Notice

Environment and Communications

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

IQ24-000077

Division/Agency: DIV - Digital Platforms Safety and Classification

Hansard Reference: Written (22 October 2024)

Topic: Freedom of expression

Karen Grogan asked:

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

Answer:

To ensure it strikes the right balance between upholding freedom of expression and combatting misinformation and disinformation, the Bill includes an extensive range of protections for freedom of expression.

The Bill sets a high threshold for the content in scope and ensures that digital communications platforms' systems and processes, are targeted at content that is reasonably likely to cause serious harm with significant and far-reaching implications for the Australian community or a segment thereof, or severe consequences for an individual in Australia.

The Bill does not deal with dissemination of content that may simply be incorrect or false, but rather seeks to address the dissemination of seriously harmful content that is reasonably verifiable as false, misleading or deceptive.

The types of harm in the Bill are narrowly defined to align with Australia's obligations under international human rights law. Only serious harm related to the following matters are in scope of the Bill:

- harm the operation or integrity of an electoral or referendum process in Australia
- harm to public health in Australia including the efficacy of preventative health measures
- vilification of a group in Australian society
- intentionally inflicted physical injury to an individual in Australia
- imminent damage to critical infrastructure or disruption of emergency services in Australia, and
- imminent harm to the Australian economy.

The Bill further excludes certain types of content from scope including:

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- dissemination of content that would reasonably be regarded as parody or satire
- dissemination of professional news content, and
- reasonable dissemination of content for any academic, artistic, scientific or religious purpose.

To protect freedom of expression, the Bill requires that, prior to approving a code or determining a standard, the ACMA must be satisfied that the code (or part thereof) is reasonably appropriate and adapted to achieving the purpose of providing adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on the platforms, and goes no further than reasonably necessary to provide that protection. These requirements are very similar to those set out under Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR).

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

The ACMA's powers are directed to digital platform providers and not individual end-users. The Bill does not empower the ACMA to:

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

The Bill will strengthen transparency and accountability requirements for digital platforms through new 'up-front' core obligations that will ensure Australians know how digital platforms treat content on their services. This includes the ability for the ACMA to set rules requiring platforms to have a complaints and dispute handling scheme to empower everyday Australians to challenge the content moderation decisions of platforms.

The Bill includes scope for key decisions of the ACMA to be reviewable by the Administrative Review Tribunal (ART). In addition, the amount of civil penalties payable by digital communications platforms for breaches of approved misinformation codes and misinformation standards would be determined by the courts (up to the maximum amounts in the Bill).

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