

Misinformation and disinformation bill – censorship or sensible?

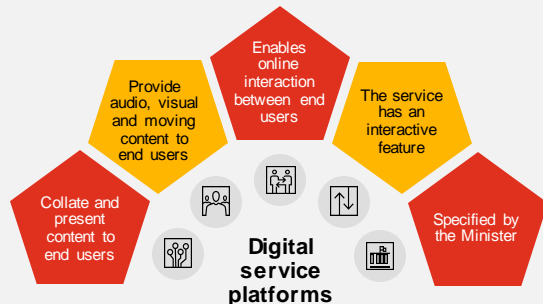


01 Background

The proposed *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* seeks to amend the *Broadcasting Services Act 1992* (Cth) and other relevant legislation to provide new powers to combat online misinformation and disinformation.

The Bill will sit beside the current voluntary framework, creating powers to enforce the voluntary framework (if required) and create new codes. The Bill guidance describes the enforcement powers as a 'last resort' if voluntary efforts are inadequate, but does not give clear direction on what is to be considered before a mandatory code may be implemented.

The Government recognises the influence that false information may have on economic stability, safety and public order. According to the Government, the Bill aims to strike a balance between the serious harms that may arise from false information, such as the fall of the US stock markets following dissemination of a false image of an explosion of the Pentagon, and the importance of freedom of expression.



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02 What is in the Bill?

Powers

Under this Bill, the Australian Communications and Media Authority (the **ACMA**) will be given enhanced powers for enforcement including:

- The power to make digital platform rules in relation to records, including providing these records to the regulator;
- Information and document gathering powers to compel digital platform providers, exercised on an as needed basis;
- The power to access public information collected under the information gathering powers;
- Create enforceable misinformation codes and standards to govern the arrangements of the digital platform industry;
- The power to request an industry body develop, vary or de-register an industry standard; and
- Electoral and referendum content is within the scope of the information powers (although will not extend to an obligation on the political parties regarding misleading and deceptive conduct).

Private user messages will not be within the scope of the powers.

Penalties

The Bill provides significant penalties for digital platforms or individuals that do not comply with the Bill and new codes and standards created, some penalties* include:

- Imprisonment of up to 12 months for providing false or misleading information to ACMA;
- Maximum penalty of non-compliance with a registered code of 10,000 penalty units (\$2.75 mill) or 2% of global turnover (whatever is greater); and
- Maximum penalty for non-compliance with an industry standard of 25,000 penalty units (\$6.88 mill) or 5% of global turnover (whatever is greater).

* This list is not exhaustive and there are a number of penalties that may apply. Organisations should take care to ensure they are fully aware of the enforcement provisions.



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03 What are the concerns?

The EU, UK and Brazil have recently proposed similar legislation. The Australian proposed Bill has raised significant concerns such as:

- **Broad Definitions and Uncertainty:** the large fines and broad definitions could lead platforms to err on the side of caution, causing legitimate content to be blocked – effectively limiting freedom of expression.
- **Political Motivations:** the potential to abuse the powers within the Bill for political reasons through censorship which could stifle legitimate political debate.
- **Competition:** onerous and wide-reaching obligations could make it difficult for smaller digital platform services to compete with larger services.
- **Enforcement:** difficulty in enforcing the legislation against overseas entities.
- **Arbiter:** Unclear who decides what is "truthful enough". It is not clear how much evidence is required for something to be considered truthful – and what obligations apply regarding disclosing contradictory evidence that exists.

Bew are of the broad application and impact on AI

- ▲ The proposed Bill is broad, aiming to apply to all 'digital platform services' from simple forum administrators to big tech. This may involve the filtering of comments on news media videos, responses on public forums, content on social platforms, customer reviews - the list goes on.
- ▲ The proposed Bill puts hefty onus on the administrators of the digital platform to establish appropriate **record keeping** and **reporting mechanisms** to provide information, as compelled, by the regulator.
- ▲ Tech companies have an ongoing obligation to remain up to date with voluntary industry frameworks, as the proposed Bill will provide a potential enforcement mechanism.
- ▲ An example of a registered code or standard may include requirements for AI platforms, such as OpenAI, to crack down on endemic bots or AI spreading false information.
- ▲ As it may be difficult to attribute a piece of anonymous content to an individual, bill guidance outlines that **the person who generated the "bot" will be considered the originator of the false information** and therefore subjected to penalties. So, if you are using AI to engage with the public online – keep this bill in mind!