

The following details some serious concerns with the Combatting Misinformation Bill

Freedom of speech/expression

The broad definition of "misinformation" could potentially capture some speech that, while false or misleading, does not cause serious harm. This may unnecessarily restrict freedom of expression.

The exclusion for "professional news" content could lead to platforms making judgment calls on what constitutes professional news. This could impact press freedom if platforms end up restricting news content.

The exclusion for "authorised" government content could enable governments to spread misinformation without accountability.

The legislation lacks clear guardrails to prevent over-blocking or over-removal of lawful content by platforms seeking to avoid penalties.

Privacy

The information gathering powers are broad and may reveal private user data, despite the carve out for private messages. It is unclear what safeguards exist around ACMA's ability to disclose obtained information to other agencies.

Here are some specific privacy concerns with the proposed legislation:

The information gathering powers allow ACMA to compel platforms to provide potentially sensitive user data, even if not related to private messages. Things like user profiles, posts, networks, demographics, and platform interactions could reveal private information about individuals.

It's unclear what limits exist around ACMA sharing user data with other government agencies. There is potential for user data obtained under these powers to end up in the hands of agencies like law enforcement without sufficient justification.

The legislation lacks clarity around what safeguards will exist for stored user data, such as data minimization, access controls, and deletion requirements. The lack of defined protections increases privacy risks.

User consent is not required for platforms to disclose private information to ACMA under these powers. This bypasses users' ability to control use of their data.

Even though private messages are excluded, requiring platforms to turn over moderation data could reveal information about private conversations that were reported/flagged. This indirectly exposes private content.

Collecting data on the "prevalence of false, misleading or deceptive information" could involve monitoring private groups, chats, or accounts for "misinformation" even if not publicly accessible.

In summary, the broad information gathering and data sharing powers create significant risks of mass collection and misuse of users' private data without their

consent. Stronger privacy safeguards around data collection, storage, access, sharing, and oversight are needed to protect Australians' digital rights.

Government overreach

The broad definitions of digital services could capture many sites and apps well beyond major platforms. Small sites may struggle with compliance. The code and standard making powers give the government significant influence over platform policies and content moderation. The scope of enforcement powers, large fines, and criminal penalties may incentivize over-compliance and censorship by platforms. There are no defined limits on when ACMA can request new industry codes, replace voluntary codes, or create binding standards. In summary, while the goal of reducing online harms has merit, parts of the proposed legislation raise concerns about impacts to free speech, privacy, and fair process. Input from legal and civil society groups could help refine the legislation to better safeguard rights and liberties. I would recommend further review of the potential unintended consequences.

Here are some ways the proposed legislation potentially allows for government overreach:

The broad definitions of digital services and vague harms could allow regulations to encroach on lawful speech and small websites beyond major platforms.

The code/standard making process gives the government and ACMA significant influence over platforms' internal policies, moderation practices, and algorithms without judicial oversight.

The lack of defined limits on when ACMA can require new codes or standards leaves discretion to determine what constitutes "harm" that requires intervention.

The large fines and criminal penalties could lead to censorship as platforms over-comply to avoid punishment. But non-compliance also risks severe penalties.

The legislation lacks due process guarantees around content takedowns or account suspensions imposed under codes/standards. Users may lack recourse for unfair moderation.

Information gathering powers allow compelled access to potentially sensitive platform data with minimal justification required. Few protections against data misuse.

Power to obtain user identities and private information risks breaching journalist/source confidentiality and enabling surveillance.

Ability to disclose user data to other agencies facilitates access for authorities without usual legal checks and balances.

Limited judicial oversight over enforcement decisions could see punitive actions taken without impartial review.

In summary, the legislation lacks safeguards against regulatory overreach, gives significant discretion to authorities, imposes severe penalties that incentivize over-compliance, and enables access to user data with minimal due process. Stronger checks and balances are needed to prevent potential government overreach.

Digital Services

Here are some potential negative impacts the proposed legislation could have on digital services:

Compliance burden - The new regulatory requirements like record-keeping, reporting, and modifying platforms to comply with codes/standards may impose significant costs, especially on smaller platforms with limited resources. This could create barriers to market entry.

Over-removal of content - To avoid large fines, platforms may end up being overly cautious and remove lawful content like satire, parody, etc that may seem questionable. This could restrict free expression.

Withdrawal from Australia - Major platforms like Facebook or Twitter may choose to geo-block Australian users rather than deal with the burdens of complying with the new rules. This would cut off Australians' access to those services.

Reduced innovation - The increased regulatory scrutiny and compliance costs may discourage digital platforms from launching new or experimental products in Australia, limiting innovation.

User impacts - Changes to platforms' algorithms, moderation policies, and interfaces to comply with codes could degrade the user experience, limiting utility of these services for Australians.

Competitive impacts - Larger platforms will be better equipped to handle compliance than startups, entrenching the market power of incumbents. Could inhibit competition and consumer choice.

To summarize, the legislation imposes significant new burdens on digital platforms that could stifle innovation and competition, force withdrawal of services, increase costs, and ultimately degrade the experience for Australian consumers and businesses that rely on these services. A more cooperative regulatory approach may help avoid unintended harms.

Serious Harm

The examples of "serious harm" provided in the legislation could be seen as having some limitations:

- Many of the examples like hate speech, foreign interference, and environmental harm are already illegal under existing Australian law. So it's unclear if additional regulation of legal speech is justified to prevent such harms.

- Terms like "public order", "integrity of democratic processes", and "economic or financial harm" are vague and open to wide interpretation. Clearer definitions may be needed to prevent overreach.

- Just because speech is offensive, causes discomfort, or spreads false information does not necessarily constitute "serious harm" that warrants limiting expression. The threshold for "serious" is subjective.

- The requirement that harm be "serious and wide-reaching" suggests only large-scale viral misinformation would be affected. But lower-level false claims can also cumulatively cause real harm.
- Assessing "harm" requires making editorial judgements of truth/falsity and public impact. But platforms lack expertise and authority to make such journalistic judgments.
- "Serious harm" often manifests from complex factors beyond just online misinformation. Restricting speech may not adequately address underlying socio-economic drivers.
- Certain examples like undermining democratic institutions or causing harm to public health rely on speculative chains of causation that are difficult to prove.

In summary, while the goal of preventing serious societal harm is valid, the subjective definitions and focus only on widespread viral misinformation could limit the effectiveness of the regulations. More nuanced approaches may be needed to address different levels and types of false information.

Freedom of Speech

Freedom of speech is a fundamental human right that refers to the ability of individuals to express their thoughts, ideas, opinions, and beliefs without fear of censorship, interference, or punishment from the government or other sources of authority. It is considered a cornerstone of democratic societies and is typically protected by laws or constitutional provisions in many countries.

At its core, freedom of speech encompasses the right to seek, receive, and impart information and ideas through various means of communication, including spoken words, written texts, visual representations, artistic expression, and digital platforms. It not only protects popular or widely accepted viewpoints but also extends to unpopular, controversial, or dissenting opinions.

The concept of freedom of speech is rooted in the belief that a free and open exchange of ideas leads to a more informed and vibrant society. It allows individuals to engage in public debate, challenge prevailing norms, criticize the government or other powerful entities, advocate for social change, and participate in the democratic process.