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Submission:

Exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

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Introduction

Australian Associated Press (AAP) is Australia's only independent national newswire.

In 2019 AAP established AAP FactCheck as a self-contained unit within the newsroom to address the growing problem of mis and disinformation online.

AAP has built its reputation on fact-based, objective journalism over almost nine decades, and under our not-for-profit structure with objectives around serving and educating all Australians, AAP FactCheck has grown from being a successful project into a core service, with a dedicated staff of journalists in Australia and New Zealand.

AAP is responsible for the majority of fact-checking on social media platforms in Australia.

We produce the highest number of fact-check articles addressing Facebook and Instagram posts in this region, and are the only organisation formally fact-checking TikTok videos in our region.

AAP FactCheck is currently the only Australian fact-checking organisation fully accredited with the International Fact Checking Network ([IFCN](#))¹, which rigorously assesses accredited fact-checkers annually to ensure compliance with stringent requirements designed to ensure our objectivity, fairness, transparency and accuracy.

Our experience in this rapidly evolving area cannot be easily replicated.

In addition to our platform work, we routinely produce public interest fact-check articles that sit outside our platform contracts. This work involves identifying and analysing claims made by public figures, regardless of where the comments appear.

We welcome the opportunity to give feedback to the draft bill and believe increased action on mis and dis-information is essential to Australian democracy.

¹ The IFCN carefully scrutinises the legitimacy of fact-checkers world-wide. Accreditation with the IFCN is a shorthand way to establish that a fact-checking organisation operates according to world's best practice. IFCN-accredited fact-checkers are a world-wide community of highly-skilled journalists, academics and trainers who frequently collaborate and share intelligence about the misinformation and disinformation landscape, and the challenges confronting fact-checking work. IFCN accreditation was a prerequisite for AAP FactCheck's third-party fact-checking agreements with both Meta (covering Australia, New Zealand and the Pacific region), and TikTok (in Australia only, with Pacific coverage on demand).

AAP FactCheck's work

AAP FactCheck is one of two Meta fact-checking partners in this region, and the sole Australian fact-checker for TikTok.

AAP FactCheck only addresses claims that meet our criteria of being verifiable, widely seen, broadly relevant, timely and consequential. We retain full editorial independence, and select from a pool of problematic claims that have been identified by the platforms, or independently by our staff.

Once identified, the claims are thoroughly researched, experts are contacted, and a fully referenced article is written and carefully edited by multiple members of our team. Our detailed and fact-driven debunks are accompanied by simple, accessible verdicts summarising the statement's veracity.

We also provide condensed advice directly to our platform partners.

Our fact-checking work with Meta and TikTok informs their interventions in relation to fact-checked content and related accounts. Those actions can include labelling harmful content with fact-check articles, restricting the reach of a post, and restricting users who repeatedly disseminate such content.

All AAP FactCheck articles are freely available on our website, promoted via our social channels, and prioritised in related Google searches.

Human fact-checking is critical in ensuring fact-checking programs maintain the implied constitutional rights of Australians to free expression and political communication.

Unlike humans, algorithmic and artificial intelligence moderation struggle to determine whether content is misleading, missing context, partly false, mostly true or satirical. It's also mostly unable to authenticate whether visual content such as images and videos have been altered.

Non-human moderation often results in arbitrary and proscriptive actions against users, particularly those who have no intention to deceive, which risks undermining their rights to free expression and political communication.

On the other hand, the ability of human fact-checkers to perceive nuances in content allows for the protection of users and society from harms, and improves the quality of the digital information environment while preserving fundamental rights.

This includes nuances in cultural or political context, underscoring the importance of engaging Australian fact-checkers to check Australian content.

The platforms amplify the value of AAP's fact-checking work by exponentially increasing the number of posts addressed by our articles and advice.

For example, according to Meta's [latest transparency report](#) to [DIGI](#), articles written by third party fact checking partners lead to warnings being displayed on more than nine million distinct pieces of content on Facebook in Australia (including reshares) in 2022. It is not clear what overall percentage of problematic content on the platform this represents.

We can see the significant impact of our work through our independent tracking of individuals and groups that produce the harmful, adversarial disinformation narratives that originate and are disseminated in Australia.

This is critical work, as ACMA found, "Online misinformation narratives have resulted in a wide range of acute and chronic harms, including undermining public health efforts and eroding trust in democratic institutions over time".²

² ACMA misinformation report - Factsheet 1: key research findings, https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report_Fact%20sheet%201%20-%20key%20research%20findings.pdf

Misinformation and disinformation in practise

AAP FactCheck's insights regarding disinformation, and in relation to this draft legislation, are borne out of years of experience in the fact-checking niche.

From our experience, the major harm to society of misinformation and disinformation is not from content that explicitly incites users into real world actions, such as committing crimes against individuals or groups, vandalising critical infrastructure, harming their own health or harming the economy.

This type of content is less common, and more likely to be removed by the platforms for breaching community guidelines, rather than being dealt with through fact-checking programs.

The greater risk comes from the cumulative effect of unchecked misinformation and disinformation that on its own may not meet the threshold outlined in this Bill, but with repeated exposure is capable of causing real world serious harms, for example, by eroding trust in government or healthcare, as experienced during the peak of the COVID-19 crisis.

The ACMA has said platforms should be taking action on misinformation and disinformation contributing to both acute and chronic harm.

“The need to address misinformation with a high risk of acute harm does not imply that this is the only misinformation over which platforms should be taking action. Although responses to chronic harms may be less urgent, the harms are not necessarily less severe.

Societies around the world are grappling with coordinated campaigns designed to sow confusion and distrust and to undermine democratic institutions over time. There is a substantial risk to Australian society and its security if misinformation contributing to chronic harms is not adequately addressed.”³

The public share the regulator's concerns regarding the potential harms of misinformation on digital platforms.

About 88 per cent of Australian users either agreed or strongly agreed misinformation was “generally harmful to individuals, groups and society” in the ACMA's most recent survey.⁴

In that same report, 78 percent of users also agreed or strongly agreed that misinformation was prevalent on digital platforms in Australia.

Users were generally satisfied with the ease of reporting harmful misinformation on platforms and the timeliness of an outcome, but they're overwhelmingly dissatisfied with transparency and actions.

Only 44 per cent were strongly dissatisfied with the actions taken in response to their reports and 48 per cent were concerned about the transparency of platform processes.

The sentiments of these Australian users about the actions of platforms in response to their reports for us reinforces the value of fact-checking operations as a proactive solution or antidote to harmful mis- and disinformation online.

³ Misinformation and news quality on digital platforms in Australia: A position paper to guide code development, ACMA, June 2020.

<https://www.acma.gov.au/sites/default/files/2020-06/Misinformation%20and%20news%20quality%20position%20paper.pdf>

⁴ *Harmful content on digital platforms: reporting and complaints*, ACMA July 25, 2023. <https://www.acma.gov.au/publications/2023-07/report/harmful-content-digital-platforms-reporting-and-complaints>

Draft Bill:

Risk of disincentivising fact-checking

Misinformation and disinformation are defined in the draft bill as being "reasonably likely to cause or contribute to *serious harm*".

By defining misinformation and disinformation in relation to 'serious harm' in this way, we are concerned the bill may discourage and disincentivise fact-checking of any content that does not meet that threshold.

It is important that the bill and voluntary codes encourage increased action on harmful misinformation and disinformation broadly, and does not have the unintended impact of narrowing the breadth of content that action is taken on to protect Australians online.

'Serious harm' is not defined in the draft bill, however, based on the examples of serious harm in the Guidance Note, a large proportion of content AAP FactCheck addresses, when considered in isolation, may fall outside the bill's 'serious harm' parameters. This misinformation and disinformation is still problematic and harmful - and left unchecked, results in a cumulative undermining of truth and facts, and confidence in critical systems and institutions.

The lack of a clear definition of 'serious harm' in the bill, and the examples provided separately, could lead to an excessively narrow interpretation by platforms to imply only 'acute' or 'imminent' harms.

Whereas, the ACMA is unambiguous about the need of a harm definition to be sufficiently broad to capture '*a range of chronic harms that can result from the cumulative effect of misinformation over time, such as reductions in community cohesion and a lessening of trust in public institutions*'⁵.

In addition, the qualifier of 'likely' in the draft bill could excessively narrow the scope of the ACMA's proposed information-gathering powers. We suggest the use of the word 'foreseeably' to better fulfil the ACMA's 2021 recommendations.

The European Digital Services Act (2022) requires digital services to identify, analyse and assess any 'systemic risks' from the design, function and use of their platforms.

It defines four broad categories of systemic risk: illegal content, any actual or foreseeable negative effects on fundamental rights, any actual or foreseeable negative effects on civic discourse and election processes and public security; any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to a person's physical health and wellbeing.

The inclusion of the words 'actual or foreseeable' gives EU regulators scope to understand evolving misinformation and disinformation risks.

The ACMA should be afforded a similarly broad scope to gather information on the range and volume of harmful content that could contribute to serious harm in the future.

Some international fact-checkers already report changes to commercial fact-checking arrangements to exclude all but the most serious tier of misinformation and disinformation. In its current format, this bill may encourage such reductions to fact-checking, which would also serve to limit access to factually accurate information countering misinformation and disinformation themes.

⁵ A report to government on the adequacy of digital platforms' disinformation and news quality measures. ACMA, June 2021.

<https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

Reporting provisions

To effectively tackle misinformation and disinformation in Australia, it is important to understand both the prevalence of false, misleading or deceptive information on digital platform services (mis and disinformation broadly) and to expand 14(1)(a) to include the proportion of this content acted upon.

Quantitative reporting is critical in order to understand how well the platforms are responding to misinformation and disinformation.

The records made and retained by the digital platforms must enable ACMA to understand the number of pieces of content on the platform that are identified as mis and disinformation (defined broadly). As well as the number of pieces of content and types of content that are addressed via its various mitigations.

Further, these figures must be understood as a percentage of all content on the platform.

General principles relating to misinformation codes and misinformation standards

It is vital that the codes are compulsory and wholly applicable to all members of the digital platform sector to which they relate.

33(3)(f) - Supporting independent fact checking is extremely important, as is giving end-users information regarding verdicts where applicable, to build a trusted, transparent process.

33(3)(i) - It is important that the platforms respond to complaints/notifications regarding misinformation and disinformation. Reporting avenues should be simple and publicised, and include an appeal/review function.

Third-party fact-checking

This bill positions fact-checkers as stakeholders, with Section 19 allowing for organisations like AAP FactCheck to be called upon to provide “information, documents and evidence” to ACMA in relation to misinformation and disinformation on digital platform services.

As a third-party fact-checker we report to the platforms and would do so in line with any record keeping requirements. It is possible Section 19.1 could discourage platforms from engaging third party fact-checking partners in the first place, for fear they may be compelled by ACMA to reveal otherwise confidential information.

Third-party fact checking is crucial in protecting users and society from harm and improving the quality of online information while protecting aforementioned fundamental rights. It ensures there is a system of checks and balances in the moderation of mis- and disinformation content. Fact-checkers assess and verify content while platforms take actions.

Fact-checkers also respond to users lodging disputes regarding rating labels placed on harmful, deceptive content. This guarantees users with the right to independently appeal any measures taken by platforms and/or the right to full remission if they correct their content.

This separation of roles ensures greater transparency of platform processes and decision-making, while protecting users from arbitrary actions, ensuring fair process and preserving their rights to expression and communication.

News Source

‘A newswire’ should be added to the list of news sources.