2022‑2023

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

|  |
| --- |
| **EXPOSURE DRAFT** |

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

No. , 2023

(Infrastructure, Transport, Regional Development, Communications and the Arts)

A Bill for an Act to amend the law relating to communications, and for related purposes

Contents

1 Short title 1

2 Commencement 1

3 Schedules 2

Schedule 1—Main amendments 2

Broadcasting Services Act 1992 2

Schedule 2—Consequential amendments and transitional provisions 2

Australian Communications and Media Authority Act 2005 2

Broadcasting Services Act 1992 2

Online Safety Act 2021 2

Telecommunications Act 1997 2

A Bill for an Act to amend the law relating to communications, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Act 2023*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedules 1 and 2 | The day after this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Main amendments

Broadcasting Services Act 1992

1 After section 216E

Insert:

216F Schedule 9 (digital platform services)

 Schedule 9 has effect.

2 At the end of the Act

Add:

Schedule 9—Digital platform services

Note: See section 216F.

Part 1—Introduction

1 Simplified outline of this Schedule

The ACMA has a graduated set of powers in relation to misinformation and disinformation on certain kinds of digital platform services.

The ACMA may make digital platform rules requiring digital platform providers to keep records and report to the ACMA on matters relating to misinformation and disinformation on digital platform services. The ACMA may obtain information, documents and evidence from digital platform providers and others relating to those matters. The ACMA may publish information relating to those matters on its website.

Bodies or associations representing sections of the digital platform industry may develop codes in relation to measures to prevent or respond to misinformation and disinformation on digital platform services. If the ACMA registers a misinformation code, digital platform providers in the relevant section of the digital platform industry must comply with the code.

Where there is no registered misinformation code, a registered misinformation code is deficient or there are exceptional and urgent circumstances, the ACMA may determine a standard to provide adequate protection for the community from misinformation or disinformation on digital platform services. Digital platform providers are required to comply with misinformation standards that apply to them.

2 Definitions

 In this Schedule:

***access*** includes:

 (a) access that is subject to a pre‑condition (for example, the use of a password); and

 (b) access by way of push technology; and

 (c) access by way of a standing request.

***Australia***, when used in a geographical sense, includes all the external Territories.

***connective media service*** has the meaning given by subclause 4(3).

***content*** means content:

 (a) whether in the form of text; or

 (b) whether in the form of data; or

 (c) whether in the form of speech, music or other sounds; or

 (d) whether in the form of visual images (animated or otherwise); or

 (e) whether in any other form; or

 (f) whether in any combination of forms.

***content aggregation service*** has the meaning given by subclause 4(2).

***digital platform provider*** means a person who provides a digital platform service.

Note: See clause 8.

***digital platform rules*** has the meaning given by subclause 64(1).

***digital platform service*** has the meaning given by subclause 4(1).

***digital service*** has the meaning given by clause 3.

***disinformation*** has the meaning given by subclause 7(2).

***dissemination*** includes the following:

 (a) dissemination using automated means;

 (b) dissemination to one person or more than one person.

***excluded content for misinformation purposes*** means any of the following:

 (a) content produced in good faith for the purposes of entertainment, parody or satire;

 (b) professional news content;

 (c) content produced by or for an educational institution accredited by any of the following:

 (i) the Commonwealth;

 (ii) a State;

 (iii) a Territory;

 (iv) a body recognised by the Commonwealth, a State or a Territory as an accreditor of educational institutions;

 (d) content produced by or for an educational institution accredited:

 (i) by a foreign government or a body recognised by a foreign government as an accreditor of educational institutions; and

 (ii) to substantially equivalent standards as a comparable Australian educational institution;

 (e) content that is authorised by:

 (i) the Commonwealth; or

 (ii) a State; or

 (iii) a Territory; or

 (iv) a local government.

***excluded services for misinformation purposes*** has the meaning given by clause 6.

***foreign government*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

***harm*** means any of the following:

 (a) hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;

 (b) disruption of public order or society in Australia;

 (c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;

 (d) harm to the health of Australians;

 (e) harm to the Australian environment;

 (f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy.

***interactive feature*** has the meaning given by clause 5.

***internet carriage service*** has the same meaning as in the *Online Safety Act 2021*.

***media sharing service*** has the meaning given by subclause 4(4).

***misinformation*** has the meaning given by subclause 7(1).

***misinformation code*** means a code developed under Part 3 (whether or not in response to a request under that Part).

***misinformation standard*** means a standard determined under Part 3.

***news content*** means content that reports, investigates or explains any of the following:

 (a) issues or events that are relevant in engaging persons in public debate and in informing democratic decision‑making;

 (b) current issues or events of public significance for persons at a local, regional, national or international level;

 (c) current issues or events of interest to persons.

***news source*** means any of the following, if it produces, and publishes online, news content:

 (a) a newspaper masthead;

 (b) a magazine;

 (c) a television program or channel;

 (d) a radio program or channel;

 (e) a website or part of a website;

 (f) a program of audio or video content designed to be distributed over the internet.

***participant***, in a section of the digital platform industry, has the meaning given by clause 31.

***post***: content is ***posted*** on a digital service by an end‑user if the end‑user causes the content to be accessible to, or delivered to, one or more other end‑users using the digital service.

***private message*** means an instant message sent using a digital platform service from one end‑user of the service (the ***sender***) to one or more other end‑users of the service (the ***recipients***) where the message is only observable to end‑users of the service selected by the sender or any of the recipients.

***professional news content*** means news content produced by a news source who:

 (a) is subject to any of the following:

 (i) the rules of the Australian Press Council Standards of Practice or the Independent Media Council Code of Conduct;

 (ii) the rules of the Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice;

 (iii) rules of a code of practice mentioned in paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983* or paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*;

 (iv) rules or internal editorial standards that are analogous to the rules mentioned in subparagraph (i), (ii) or (iii) to the extent that they relate to the provision of quality journalism;

 (v) rules specified for the purposes of this paragraph in the digital platform rules; and

 (b) has editorial independence from the subjects of the news source’s news coverage.

***provided on a digital service*** has the meaning given by clause 9.

***provided to the public***, in relation to a service, has the meaning given by clause 10.

***public body*** means:

 (a) the Commonwealth, a State or a Territory; or

 (b) an authority, or institution, of the Commonwealth, a State or a Territory; or

 (c) an incorporated company all the stock or shares in the capital of which is beneficially owned by one of the following:

 (i) the Commonwealth;

 (ii) a State;

 (iii) a Territory; or

 (d) an incorporated company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by one of the following:

 (i) the Commonwealth;

 (ii) a State;

 (iii) a Territory.

***section of the digital platform industry*** has the meaning given by clause 30.

***service*** includes a website.

***using*** has a meaning affected by clause 11.

3 Digital service

 For the purposes of this Schedule, a ***digital service*** is a service that:

 (a) delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or

 (b) allows end‑users to access content using an internet carriage service;

where:

 (c) the service is provided to the public (whether on payment of a fee or otherwise); and

 (d) any of the content accessible using the service, or delivered by the service, is accessible to, or delivered to, one or more end‑users in Australia;

but does not include a service to the extent to which it is:

 (e) a broadcasting service; or

 (f) a datacasting service.

4 Digital platform service

Digital platform services

 (1) For the purposes of this Schedule, a ***digital platform service*** is a digital service that is:

 (a) a content aggregation service (see subclause (2)); or

 (b) a connective media service (see subclause (3)); or

 (c) a media sharing service (see subclause (4)); or

 (d) a digital service specified by the Minister in an instrument under subclause (6);

but does not include a digital service to the extent to which it is:

 (e) an internet carriage service; or

 (f) an SMS service; or

 (g) an MMS service.

Note 1: ***SMS*** is short for short message service.

Note 2: ***MMS*** is short for multimedia message service.

Content aggregation services, connective media services and media sharing services

 (2) For the purposes of this Schedule, a digital service that satisfies the following conditions is a ***content aggregation service***:

 (a) a primary function of the digital service is to collate and present to end‑users content from a range of online sources, including sources other than the digital service;

 (b) such other conditions (if any) as are set out in the digital platform rules.

 (3) For the purposes of this Schedule, a digital service that satisfies the following conditions is a ***connective media service***:

 (a) a primary function of the digital service is to enable online interaction between 2 or more end‑users;

 (b) the digital service allows end‑users to link to, or interact with, some or all of the other end‑users;

 (c) the digital service has an interactive feature;

 (d) such other conditions (if any) as are set out in the digital platform rules.

 (4) For the purposes of this Schedule, a digital service that satisfies the following conditions is a ***media sharing service***:

 (a) a primary function of the digital service is to provide audio, audio‑visual or moving visual content to end‑users;

 (b) such other conditions (if any) as are set out in the digital platform rules.

 (5) In determining whether the condition set out in paragraph (2)(a), (3)(a) or (4)(a) is satisfied, disregard any of the following functions:

 (a) the provision of advertising material on the digital service;

 (b) the generation of revenue from the provision of advertising material on the digital service;

 (c) collection of data using the digital service;

 (d) the generation of revenue from data collected using the digital service.

Specifying digital services by instrument

 (6) The Minister may, by legislative instrument, specify that a kind of digital service is a digital platform service if the Minister is satisfied that it is appropriate to apply provisions of this Schedule to the digital service to provide adequate protection for the community.

 (7) The Minister must consult the ACMA before the Minister makes an instrument under subclause (6).

5 Interactive feature

 For the purposes of this Schedule, a digital service has an ***interactive feature*** if at least one of the following applies to the digital service:

 (a) the digital service allows end‑users to post content on the digital service;

 (b) the digital service provides a means for end‑users to share, using the digital service, content that is provided on the digital service with another end‑user of the digital service;

 (c) the digital service makes:

 (i) interaction between end‑users; or

 (ii) interaction by end‑users with content provided on the digital service;

 observable to other end‑users.

6 Excluded services for misinformation purposes

 (1) For the purposes of this Schedule, the following services are ***excluded services for misinformation purposes***:

 (a) an email service;

 (b) a media sharing service that does not have an interactive feature;

 (c) a digital platform service specified by the Minister in an instrument under subclause (2).

 (2) The Minister may, by legislative instrument, specify that a digital platform service is an excluded service for misinformation purposes.

7 Misinformation and disinformation

 (1) For the purposes of this Schedule, dissemination of content using a digital service is ***misinformation*** on the digital service if:

 (a) the content contains information that is false, misleading or deceptive; and

 (b) the content is not excluded content for misinformation purposes; and

 (c) the content is provided on the digital service to one or more end‑users in Australia; and

 (d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.

 (2) For the purposes of this Schedule, dissemination of content using a digital service is ***disinformation*** on the digital service if:

 (a) the content contains information that is false, misleading or deceptive; and

 (b) the content is not excluded content for misinformation purposes; and

 (c) the content is provided on the digital service to one or more end‑users in Australia; and

 (d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm; and

 (e) the person disseminating, or causing the dissemination of, the content intends that the content deceive another person.

Note: Disinformation includes disinformation by or on behalf of a foreign power.

 (3) For the purposes of this Schedule, in determining whether the provision of content on a digital service is reasonably likely to cause or contribute to serious harm, have regard to the following matters:

 (a) the circumstances in which the content is disseminated;

 (b) the subject matter of the false, misleading or deceptive information in the content;

 (c) the potential reach and speed of the dissemination;

 (d) the severity of the potential impacts of the dissemination;

 (e) the author of the information;

 (f) the purpose of the dissemination;

 (g) whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct;

 (h) other related false, misleading or deceptive information disseminated;

 (i) any other relevant matter.

Note: See the definition of ***harm*** in clause 2.

 (4) Subclause (2) does not limit subclause (1).

8 Digital platform provider

 (1) For the purposes of this Schedule, a person does not provide a digital platform service merely because the person supplies an internet carriage service that enables content to be delivered or accessed.

 (2) For the purposes of this Schedule, a person does not provide a digital platform service merely because the person provides a billing service, or a fee collection service, in relation to a digital platform service.

9 When content is provided on a digital service

 (1) For the purposes of this Schedule, content is ***provided on*** a digital service if the content is:

 (a) delivered by the digital service; or

 (b) accessible to end‑users using the digital service.

 (2) For the purposes of this Schedule, content is ***provided on*** a digital service to an end‑user if the content is:

 (a) delivered to the end‑user by the digital service; or

 (b) accessible to the end‑user using the digital service.

10 When a service is provided to the public etc.

 (1) For the purposes of this Schedule, a service is ***provided to the public*** if, and only if, the service is provided to at least one person outside the immediate circle (within the meaning of the *Telecommunications Act 1997*) of the person who provides the service.

 (2) For the purposes of this Schedule, a service that is provided to the public is taken to be different from a service that is not provided to the public, even if the content provided on the services is identical.

11 Extended meaning of *using*

 A reference in this Schedule to ***using*** a thing is a reference to using the thing either:

 (a) in isolation; or

 (b) in conjunction with one or more other things.

12 Extra‑territorial application

 This Schedule extends to acts, omissions, matters and things outside Australia.

Part 2—Information

Division 1—Scope

13 Part does not apply to excluded services for misinformation purposes

 This Part does not apply in relation to a digital platform service to the extent that it is an excluded service for misinformation purposes.

Division 2—Record keeping and reporting

14 ACMA may make digital platform rules in relation to records

Records

 (1) The digital platform rules may require a digital platform provider of:

 (a) a digital platform service specified in the rules; or

 (b) a digital platform service in a class of digital platform services specified in the rules;

to make and retain records relating to the following:

 (c) misinformation or disinformation on the service;

 (d) measures implemented by the provider to prevent or respond to misinformation or disinformation on the service, including the effectiveness of the measures;

 (e) the prevalence of content containing false, misleading or deceptive information provided on the service (other than excluded content for misinformation purposes).

 (2) Before the ACMA makes a digital platform rule for the purposes of this clause in relation to a digital platform service, the ACMA must consider:

 (a) the privacy of end‑users of the service; and

 (b) whether the rule is required for the performance of the ACMA’s function under paragraph 10(1)(mb), (mc), (md), (me), (mf), (mg) or (q) of the *Australian Communications and Media Authority Act 2005*.

 (3) Digital platform rules made for the purposes of this clause must not require digital platform providers to make or retain records of the content of private messages.

 (4) Digital platform rules may specify the manner and form in which the records are to be made. Digital platform rules may specify the period for which the records are to be retained.

Reporting

 (5) Digital platform rules may also require those digital platform providers to prepare reports consisting of information contained in the records.

 (6) Digital platform rules may also require those digital platform providers to give any or all of the reports to the ACMA.

 (7) Digital platform rules may specify the manner and form in which reports are to be prepared.

 (8) Digital platform rules may provide for:

 (a) the preparation of reports as and when required by the ACMA; or

 (b) the preparation of periodic reports relating to such regular intervals as are specified in the rules.

 (9) Digital platform rules may require or permit a report prepared in accordance with the rules to be given to the ACMA, in accordance with specified software requirements and specified authentication requirements:

 (a) on a specified kind of data processing device (within the meaning of the *Telecommunications Act 1997*); or

 (b) by way of a specified kind of electronic transmission.

 (10) If digital platform rules require a digital platform provider to give a report to the ACMA, the rules must allow the provider to:

 (a) identify to the ACMA any information in the report the publication of which the provider considers could be expected to prejudice materially the commercial interests of a person; and

 (b) provide reasons.

Relationship with information‑gathering powers

 (11) This clause does not limit clause 18 or 19 (which are about the general information‑gathering powers of the ACMA).

15 Compliance with the digital platform rules

 (1) A digital platform provider must not contravene digital platform rules made for the purposes of clause 14.

Civil penalty provision

 (2) Subclause (1) is a civil penalty provision.

 (3) A digital platform provider who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

 (4) Subclause (1) is a designated infringement notice provision.

Warnings

 (5) If the ACMA is satisfied that a digital platform provider has contravened subclause (1), the ACMA may issue a formal warning to the provider.

 (6) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subclause (5) is taken to be a notice under this Schedule.

16 Remedial directions—contravention of digital platform rules

Scope

 (1) This clause applies if the ACMA is satisfied that a digital platform provider has contravened, or is contravening, digital platform rules made for the purposes of clause 14.

Remedial directions

 (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene digital platform rules made for the purposes of clause 14, or is unlikely to contravene those rules, in the future.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

 (3) A digital platform provider must not contravene a direction under subclause (2).

Civil penalty provision

 (4) Subclause (3) is a civil penalty provision.

 (5) A digital platform provider who contravenes subclause (3) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Notice

 (6) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a direction under subclause (2) is taken to be a notice under this Schedule.

17 Incorrect records

 (1) A person commits an offence if:

 (a) the person makes or retains a record in compliance, or purported compliance, with digital platform rules made for the purposes of clause 14; and

 (b) the person does so knowing that the record:

 (i) is false or misleading; or

 (ii) omits any matter or thing without which the record is misleading.

Penalty: 100 penalty units.

 (2) Section 15.4 of the *Criminal Code* (Extended geographical jurisdiction—category D) applies to an offence against subclause (1).

Division 3—Information gathering

18 ACMA may obtain information and documents from digital platform providers

Scope

 (1) This clause applies to a digital platform provider of a digital platform service if:

 (a) the ACMA has reason to believe that the provider:

 (i) has information or a document that is relevant to a matter mentioned in subclause (2); or

 (ii) is capable of giving evidence which the ACMA has reason to believe is relevant to a matter mentioned in subclause (2); and

 (b) the ACMA considers that it requires the information, document or evidence for the performance of the ACMA’s function under paragraph 10(1)(mb), (mc), (md), (me), (mf), (mg) or (q) of the *Australian Communications and Media Authority Act 2005*.

 (2) For the purposes of paragraph (1)(a), the matters are as follows:

 (a) misinformation or disinformation on the service;

 (b) measures implemented by the provider to prevent or respond to misinformation or disinformation on the service, including the effectiveness of the measures;

 (c) the prevalence of content containing false, misleading or deceptive information provided on the service (other than excluded content for misinformation purposes).

ACMA may require information, documents or evidence

 (3) The ACMA may, by written notice given to the provider, require the provider:

 (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or

 (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or

 (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or

 (d) if the provider is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

 (e) if the provider is a body corporate or a public body—to cause a competent officer of the body to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

 (f) if the provider is a partnership—to cause an individual who is:

 (i) a partner in the partnership; or

 (ii) an employee of the partnership;

 to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

 (4) However, a notice cannot require a person to give information or evidence, or produce a document or copy, that would reveal the content of a private message.

 (5) A digital platform provider must comply with a requirement under subclause (3).

Civil penalty provision

 (6) Subclause (5) is a civil penalty provision.

 (7) A digital platform provider who contravenes subclause (5) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

 (8) Subclause (5) is a designated infringement notice provision.

Requirements for notice

 (9) A notice given to a digital platform provider under subclause (3) must set out the effect of the following provisions:

 (a) subclauses (5), (6) and (7);

 (b) subclause 22(1) (false or misleading evidence);

 (c) subsection 205F(1) (civil penalty orders).

Warnings

 (10) If the ACMA is satisfied that a digital platform provider has contravened subclause (5), the ACMA may issue a formal warning to the provider.

 (11) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subclause (10) is taken to be a notice under this Schedule.

19 ACMA may obtain information and documents from other persons

Scope

 (1) This clause applies to a person if:

 (a) the ACMA has reason to believe that the person:

 (i) has information or a document that is relevant to a matter mentioned in subclause (2); or

 (ii) is capable of giving evidence which the ACMA has reason to believe is relevant to a matter mentioned in subclause (2); and

 (b) the ACMA considers that it requires the information, document or evidence for the performance of the ACMA’s function under paragraph 10(1)(md) of the *Australian Communications and Media Authority Act 2005*.

 (2) For the purposes of paragraph (1)(a), the matters are as follows:

 (a) misinformation or disinformation on a digital platform service;

 (b) measures implemented by a digital platform provider to prevent or respond to misinformation or disinformation on a digital platform service, including the effectiveness of the measures;

 (c) the prevalence of content containing false, misleading or deceptive information provided on a digital platform service (other than excluded content for misinformation purposes).

ACMA may require information, documents or evidence

 (3) The ACMA may, by written notice given to the person, require the person:

 (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or

 (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or

 (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or

 (d) if the person is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

 (e) if the person is a body corporate or a public body—to cause a competent officer of the body to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

 (f) if the person is a partnership—to cause an individual who is:

 (i) a partner in the partnership; or

 (ii) an employee of the partnership;

 to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

 (4) However, a notice cannot require a person to give information or evidence, or produce a document or copy, that would reveal the content of a private message.

 (5) A person to whom a notice is given under subclause (3) must comply with a requirement under subclause (3).

Civil penalty provision

 (6) Subclause (5) is a civil penalty provision.

 (7) A person who contravenes subclause (5) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

 (8) Subclause (5) is a designated infringement notice provision.

Requirements for notice

 (9) A notice given to a person under subclause (3) must set out the effect of the following provisions:

 (a) subclauses (5), (6) and (7);

 (b) subclause 22(1) (false or misleading evidence);

 (c) subsection 205F(1) (civil penalty orders).

Warnings

 (10) If the ACMA is satisfied that a person has contravened subclause (5), the ACMA may issue a formal warning to the person.

 (11) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subclause (10) is taken to be a notice under this Schedule.

20 Copying documents—reasonable compensation

 A person is entitled to be paid by the ACMA reasonable compensation for complying with a requirement covered by paragraph 18(3)(c) or 19(3)(c).

21 Self‑incrimination

 (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Division on the ground that giving the information or evidence or producing the document or copy might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self‑incrimination.

 (2) However:

 (a) the information or evidence given or document or copy produced; and

 (b) the giving of the information or evidence or the production of the document or copy; and

 (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or evidence or the production of the document or copy;

is not admissible in evidence against the individual in criminal proceedings other than:

 (d) proceedings for an offence against subclause 22(1); or

 (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division.

 (3) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to giving information or evidence or producing a document or copy under this Division, the individual is not excused from giving the information or evidence or producing the document or copy under this Division on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

22 Giving false or misleading information or evidence

 (1) A person commits an offence if:

 (a) the person gives information or evidence, or produces a document or copy, in compliance or purported compliance with a requirement under subclause 18(3) or 19(3); and

 (b) the person does so knowing that the information, evidence or document or copy:

 (i) is false or misleading; or

 (ii) omits any matter or thing without which the information, evidence, document or copy is misleading.

Penalty: Imprisonment for 12 months.

 (2) Subclause (1) does not apply to the extent that the information, evidence, document or copy is or contains information that:

 (a) is false or misleading information that was disseminated using a digital platform service; and

 (b) the person identified to the ACMA as false or misleading when giving the information or evidence or producing the document or copy.

 (3) Section 15.4 of the *Criminal Code* (Extended geographical jurisdiction—category D) applies to an offence against subclause (1).

23 Copies of documents

 (1) The ACMA may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.

 (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 18(3)(c) or 19(3)(c).

24 ACMA may retain documents

 (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under this Division.

 (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.

 (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

 (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

Division 4—Publishing information

25 Publication on website

 (1) The ACMA may publish information on its website relating to the following:

 (a) misinformation or disinformation on digital platform services;

 (b) measures implemented by digital platform providers to prevent or respond to misinformation or disinformation on digital platform services, including the effectiveness of the measures;

 (c) the prevalence of content containing false, misleading or deceptive information provided on digital platform services (other than excluded content for misinformation purposes).

 (2) The information may relate to:

 (a) a particular digital platform service or digital platform provider; or

 (b) a class of digital platform services or digital platform providers; or

 (c) all digital platform services or digital platform providers.

 (3) The information may include information that was obtained by the ACMA under this Part.

26 Consultation before publication

 Before the ACMA publishes information under clause 25 that:

 (a) relates to a digital platform provider or a digital platform service of a digital platform provider; and

 (b) identifies the service or provider;

the ACMA must:

 (c) provide a copy of the information proposed to be published to the provider; and

 (d) invite the provider to, before a specified date:

 (i) make a submission in relation to the proposal to publish the information; and

 (ii) identify any of the information the publication of which the provider considers could be expected to prejudice materially the commercial interests of a person and provide reasons; and

 (e) consider any response given before the specified date by the provider.

27 Personal information

 The ACMA must not publish information under clause 25 if the ACMA is satisfied that the information is personal information (within the meaning of the *Privacy Act 1988*).

28 Relationship with Part 7A of the *Australian Communications and Media Authority Act 2005*

 This Division does not limit Part 7A of the *Australian Communications and Media Authority Act 2005*.

Part 3—Misinformation codes and misinformation standards

Division 1—Scope

29 Part does not apply to excluded services for misinformation purposes

 (1) This Part does not apply in relation to a digital platform service to the extent that it is an excluded service for misinformation purposes.

 (2) A misinformation code or misinformation standard does not apply in relation to a digital platform service to the extent that it is an excluded service for misinformation purposes.

Division 2—Interpretation

30 Sections of the digital platform industry

 (1) For the purposes of this Schedule, ***sections of the digital platform industry*** are to be ascertained in accordance with this clause.

 (2) For the purposes of this Schedule, each of the following groups is a ***section of the digital platform industry***:

 (a) digital platform providers who provide content aggregation services;

 (b) digital platform providers who provide connective media services;

 (c) digital platform providers who provide media sharing services.

 (3) For each kind of digital service specified by the Minister under subclause 4(6), the digital platform providers who provide that kind of service are a ***section of the digital platform industry***.

 (4) Digital platform rules may provide that persons who provide a kind of digital platform service constitute a section of the digital platform industry for the purposes of this Schedule.

 (5) The section of the digital platform industry must be identified in the digital platform rules by a unique name and/or number.

 (6) Digital platform rules made for the purposes of subclause (4) have effect accordingly.

 (7) Sections of the digital platform industry provided by digital platform rules under subclause (4):

 (a) need not be mutually exclusive; and

 (b) may consist of the aggregate of any 2 or more sections of the digital platform industry mentioned in subclause (2) or (3) or provided under subclause (4); and

 (c) may be subsets of a section of the digital platform industry mentioned in subclause (2) or (3) or provided under subclause (4).

 (8) Subclause (7) does not, by implication, limit subclause (4).

31 Participants in a section of the digital platform industry

 For the purposes of this Schedule, if a digital platform provider is a member of a group that constitutes a section of the digital platform industry, the provider is a ***participant*** in that section of the digital platform industry.

Division 3—General principles relating to misinformation codes and misinformation standards

32 Statement of regulatory policy

 The Parliament intends that one or more bodies or associations that the ACMA is satisfied represent sections of the digital platform industry should develop one or more codes (***misinformation codes***) that require participants in those sections of the digital platform industry to implement measures to prevent or respond to misinformation and disinformation on digital platform services.

33 Examples of matters that may be dealt with by misinformation codes and misinformation standards

 (1) This clause sets out examples of matters that may be dealt with by misinformation codes and misinformation standards.

 (2) The applicability of a particular example will depend on which section of the digital platform industry is involved.

 (3) The examples are as follows:

 (a) preventing or responding to misinformation or disinformation on digital platform services;

 (b) using technology to prevent or respond to misinformation or disinformation on digital platform services;

 (c) preventing or responding to misinformation or disinformation on digital platform services that constitutes an act of foreign interference (within the meaning of the *Australian Security Intelligence Organisation Act 1979*);

 (d) preventing advertising involving misinformation or disinformation on digital platform services;

 (e) preventing monetisation of misinformation or disinformation on digital platform services;

 (f) supporting fact checking;

 (g) allowing end‑users to detect and report misinformation or disinformation on digital platform services;

 (h) giving information to end‑users about the source of political or issues‑based advertisements;

 (i) policies and procedures for receiving and handling reports and complaints from end‑users;

 (j) giving end‑users and others information about misinformation or disinformation on digital platform services.

34 Limitation—private messages

 The ACMA must not register a code (or part of a code), or determine a standard, under this Part that contains requirements relating to:

 (a) the content of private messages; or

 (b) encryption of private messages.

35 Limitation—electoral and referendum matters

 (1) The ACMA must not register a code (or part of a code), or determine a standard, under this Part that contains requirements relating to electoral and referendum content unless:

 (a) the requirements relate to preventing or responding to disinformation on a digital platform service; and

 (b) the requirements do not relate to authorised content.

 (2) In this clause:

***authorised content*** means:

 (a) electoral matter (within the meaning of the *Commonwealth Electoral Act 1918*) that contains the particulars required by section 321D of that Act to be notified; or

 (b) referendum matter (within the meaning of the *Referendum (Machinery Provisions) Act 1984*) that contains the particulars required by section 110C of that Act to be notified; or

 (c) matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a State, Territory or local government election or referendum that contains the particulars required to be notified by a State or Territory law relating to the authorisation of such matter.

***electoral and referendum content*** means:

 (a) electoral matter (within the meaning of the *Commonwealth Electoral Act 1918*); or

 (b) referendum matter (within the meaning of the *Referendum (Machinery Provisions) Act 1984*); or

 (c) matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a State, Territory or local government election or referendum.

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).

36 Limitation—other instruments, codes and standards

 For the purposes of this Schedule, a misinformation code or misinformation standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

 (a) online content service provider rules (within the meaning of Schedule 8); or

 (b) basic online safety expectations determined under Part 4 of the *Online Safety Act 2021*; or

 (c) a code registered, or a standard determined, under Division 7 of Part 9 of that Act; or

 (d) a service provider determination made under Division 8 of Part 9 of that Act.

Division 4—Misinformation codes

Subdivision A—Registration of misinformation codes

37 Registration of codes

 (1) This clause applies if:

 (a) the ACMA is satisfied that a body or association represents a particular section of the digital platform industry; and

 (b) that body or association develops a code that applies to participants in that section of the digital platform industry and deals with one or more matters relating to the operation of digital platform services by those participants; and

 (c) the body or association gives a copy of the code to the ACMA; and

 (d) the ACMA considers:

 (i) whether the code burdens freedom of political communication; and

 (ii) if so, whether the burden is reasonable and not excessive, having regard to any circumstances the ACMA considers relevant; and

 (e) the ACMA is satisfied that:

 (i) the code (or part of the code) requires participants in that section of the digital platform industry to implement measures to prevent or respond to misinformation or disinformation on the services; and

 (ii) the code (or part of the code) enables assessment of compliance with the measures; and

 (iii) the code (or part of the code) provides adequate protection for the community from misinformation or disinformation on the services; and

 (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

 (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and

 (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

 (g) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

 (i) the body or association published a draft of the code and invited participants in that section of the digital platform industry to make submissions to the body or association about the draft within a specified period; and

 (ii) the body or association gave consideration to any submissions that were received from participants in that section of the digital platform industry within that period; and

 (h) the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the code.

 (2) A period specified under subparagraph (1)(f)(i) or (1)(g)(i) must run for at least 30 days.

 (3) The ACMA may register the code or part of the code by including the code or part in the Register kept under clause 55.

 (4) If the ACMA registers part of a misinformation code, this Schedule has effect as if the part were a misinformation code.

 (5) If:

 (a) a misinformation code (the ***new code***) is registered under this Part; and

 (b) the new code is expressed to replace another misinformation code (the ***old code***);

the old code ceases to be registered under this Part when the new code is registered.

38 ACMA may request codes

 (1) If the ACMA is satisfied that a body or association represents a particular section of the digital platform industry, the ACMA may, by written notice given to the body or association, request the body or association to:

 (a) develop a code that applies to participants in that section of the digital platform industry and deals with one or more specified matters relating to the operation of digital platform services by those participants; and

 (b) give the ACMA a copy of the code within the period specified in the notice.

 (2) The period specified in a notice under subclause (1) must run for at least 120 days.

 (3) The ACMA must not make a request under subclause (1) in relation to a particular section of the digital platform industry unless the ACMA is satisfied that:

 (a) the development of the code is necessary or convenient in order to:

 (i) prevent or respond to misinformation or disinformation on digital platform services of participants in that section of the digital platform industry; or

 (ii) address systemic issues in relation to misinformation or disinformation on digital platform services of participants in that section of the digital platform industry; and

 (b) in the absence of the request, it is unlikely that the code would be developed within a reasonable period.

 (4) The ACMA may vary a notice under subclause (1) by extending the period specified in the notice.

 (5) Subclause (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

 (6) A notice under subclause (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

39 Publication of notice where no body or association represents a section of the digital platform industry

 (1) If the ACMA is satisfied that a particular section of the digital platform industry is not represented by a body or association, the ACMA may publish a notice on its website:

 (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subclause 38(1); and

 (b) setting out the matter or matters relating to the operation of digital platform services that would be likely to be specified in the subclause 38(1) notice.

 (2) The period specified in a notice under subclause (1) must run for at least 60 days.

Subdivision B—Variation, replacement and deregistration of misinformation codes

40 Variation of misinformation codes

Scope

 (1) This clause applies if:

 (a) a misinformation code is registered under this Part; and

 (b) the code:

 (i) applies to participants in a particular section of the digital platform industry; and

 (ii) deals with one or more matters relating to the operation of digital platform services by those participants; and

 (c) the body or association that developed the code gives a draft variation of the code to the ACMA; and

 (d) disregarding any provisions of the code that are not affected (whether directly or indirectly) by the variation, the ACMA considers:

 (i) whether the code (as proposed to be varied) burdens freedom of political communication; and

 (ii) if so, whether the burden is reasonable and not excessive, having regard to any circumstances the ACMA considers relevant; and

 (e) disregarding any provisions of the code that are not affected (whether directly or indirectly) by the variation, the ACMA is satisfied that:

 (i) the code (as proposed to be varied) requires participants in that section of the digital platform industry to implement measures to prevent or respond to misinformation or disinformation on the services; and

 (ii) the code (as proposed to be varied) enables assessment of compliance with the measures; and

 (iii) the code (as proposed to be varied) provides adequate protection for the community from misinformation or disinformation on the services; and

 (f) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the draft variation to the ACMA:

 (i) the body or association published the draft variation on its website and invited members of the public to make submissions to the body or association about the draft variation within a specified period; and

 (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

 (g) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the draft variation to the ACMA:

 (i) the body or association published the draft variation on its website and invited participants in that section of the digital platform industry to make submissions to the body or association about the draft variation within a specified period; and

 (ii) the body or association gave consideration to any submissions that were received from participants in that section of the digital platform industry within that period; and

 (h) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the draft variation.

Period for making submissions

 (2) A period specified under subparagraph (1)(f)(i) or (1)(g)(i) must run for at least 30 days.

Approval of variation

 (3) The ACMA may, by written notice given to the body or association, approve the draft variation.

 (4) If the ACMA approves the draft variation, the code is varied accordingly.

41 Replacement of misinformation codes

 Changes to a misinformation code may be achieved by replacing the code instead of varying the code. However, this does not prevent the ACMA from removing under clause 42 a misinformation code, or a provision of a misinformation code, from the Register kept under clause 55.

42 Deregistration of misinformation codes and provisions of misinformation codes

 (1) The ACMA may remove from the Register kept under clause 55:

 (a) a misinformation code; or

 (b) a provision of a misinformation code.

 (2) A misinformation code ceases to be registered when it is removed from the Register.

 (3) If the ACMA removes a provision of a misinformation code from the Register, this Schedule has effect in relation to things occurring after the removal of the provision as if the code registered under this Part did not include the provision removed.

Subdivision C—Compliance with misinformation codes

43 Compliance with registered misinformation code

 (1) If:

 (a) a misinformation code that applies to participants in a particular section of the digital platform industry is registered under this Part; and

 (b) a digital platform provider is a participant in that section of the digital platform industry;

the provider must comply with the code.

Civil penalty provision

 (2) Subclause (1) is a civil penalty provision.

Designated infringement notice provision

 (3) Subclause (1) is a designated infringement notice provision.

Warnings

 (4) If the ACMA is satisfied that a digital platform provider has contravened subclause (1), the ACMA may issue a formal warning to the provider.

 (5) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subclause (4) is taken to be a notice under this Schedule.

44 Remedial directions—contravention of misinformation code

Scope

 (1) This clause applies if:

 (a) a misinformation code that applies to participants in a particular section of the digital platform industry is registered under this Part; and

 (b) a digital platform provider is a participant in that section of the digital platform industry; and

 (c) the ACMA is satisfied that the provider has contravened, or is contravening, the code.

Remedial directions

 (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the code, or is unlikely to contravene the code, in the future.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

 (3) A digital platform provider must not contravene a direction under subclause (2).

Civil penalty provision

 (4) Subclause (3) is a civil penalty provision.

Notice

 (5) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a direction under subclause (2) is taken to be a notice under this Schedule.

Division 5—Misinformation standards

Subdivision A—Determination of standards

45 General requirement—consideration of freedom of political communication

 Before determining a standard under this Division, the ACMA must consider:

 (a) whether the standard would burden freedom of political communication; and

 (b) if so, whether the burden would be reasonable and not excessive, having regard to any circumstances the ACMA considers relevant.

46 ACMA may determine standards—request for a code is not complied with

 (1) This clause applies if:

 (a) the ACMA has made a request under subclause 38(1) in relation to the development of a code that is to:

 (i) apply to participants in a particular section of the digital platform industry; and

 (ii) deal with one or more matters relating to the operation of digital platform services by those participants; and

 (b) any of the following conditions is satisfied:

 (i) the request is not complied with;

 (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;

 (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and

 (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in relation to that matter or those matters in order to provide adequate protection for the community from misinformation or disinformation on the services.

 (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the digital platform industry and deals with that matter or those matters. A standard under this subclause is to be known as a ***misinformation standard***.

 (3) Before determining a standard under this clause, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.

47 ACMA may determine standards—no industry body or association formed

 (1) This clause applies if:

 (a) the ACMA is satisfied that a particular section of the digital platform industry is not represented by a body or association; and

 (b) the ACMA has published a notice under subclause 39(1) relating to that section of the digital platform industry; and

 (c) that notice:

 (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subclause 38(1); and

 (ii) sets out one or more matters relating to the operation of digital platform services by participants in that section of the digital platform industry; and

 (d) no such body or association comes into existence within that period; and

 (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in relation to that matter or those matters in order to provide adequate protection for the community from misinformation or disinformation on the services.

 (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the digital platform industry and deals with that matter or those matters. A standard under this subclause is to be known as a ***misinformation standard***.

48 ACMA may determine standards—total failure of misinformation code

 (1) This clause applies if:

 (a) a registered misinformation code that:

 (i) applies to participants in a particular section of the digital platform industry; and

 (ii) deals with one or more matters relating to the operation of digital platform services by those participants;

 has been registered under this Part for at least 180 days; and

 (b) the ACMA is satisfied that the code is totally deficient (as defined by subclause (6)); and

 (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

 (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the digital platform industry and deals with that matter or those matters.

 (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.

 (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the digital platform industry and deals with that matter or those matters. A standard under this subclause is to be known as a ***misinformation standard***.

 (4) If the ACMA is satisfied that a body or association represents that section of the digital platform industry, the ACMA must consult the body or association before determining a standard under subclause (3).

 (5) The code ceases to be registered under this Part on the day on which the standard takes effect. However, this subclause does not affect any investigation, proceeding or remedy in respect of a contravention of the code that occurred before that day.

 (6) For the purposes of this clause, a misinformation code that:

 (a) applies to participants in a particular section of the digital platform industry; and

 (b) deals with one or more matters relating to the operation of digital platform services by those participants;

is ***totally deficient*** if, and only if, the code is not operating to provide adequate protection for the community from misinformation or disinformation on the services.

49 ACMA may determine standards—partial failure of misinformation code

 (1) This clause applies if:

 (a) a misinformation code that:

 (i) applies to participants in a particular section of the digital platform industry; and

 (ii) deals with 2 or more matters relating to the operation of digital platform services by those participants;

 has been registered under this Part for at least 180 days; and

 (b) clause 48 does not apply to the code; and

 (c) the ACMA is satisfied that the code is deficient (as defined by subclause (6)) to the extent to which the code deals with one or more of those matters (the ***deficient matter*** or ***deficient matters***); and

 (d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

 (e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the digital platform industry and deals with the deficient matter or deficient matters.

 (2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.

 (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the digital platform industry and deals with the deficient matter or deficient matters. A standard under this subclause is to be known as a ***misinformation standard***.

 (4) If the ACMA is satisfied that a body or association represents that section of the digital platform industry, the ACMA must consult the body or association before determining a standard under subclause (3).

 (5) On and after the day on which the standard takes effect, the code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subclause does not affect:

 (a) the continuing registration of the remainder of the code; or

 (b) any investigation, proceeding or remedy in respect of a contravention of the code that occurred before that day.

 (6) For the purposes of this clause, a misinformation code that:

 (a) applies to participants in a particular section of the digital platform industry; and

 (b) deals with 2 or more matters relating to the operation of digital platform services by those participants;

is ***deficient*** to the extent to which it deals with a particular one of those matters if, and only if, in relation to that matter, the code is not operating to provide adequate protection for the community from misinformation or disinformation on the services.

50 ACMA may determine standards—emerging circumstances

 (1) This clause applies if the ACMA is satisfied that:

 (a) it is necessary or convenient for the ACMA to determine a standard that:

 (i) applies to participants in a particular section of the digital platform industry; and

 (ii) deals with one or more matters relating to the operation of digital platform services by those participants;

 in order to provide adequate protection for the community from misinformation or disinformation on the services; and

 (b) there are exceptional and urgent circumstances justifying the determination of the standard under this clause; and

 (c) it is unlikely that a code dealing with that matter or matters could be developed under this Part within a reasonable period in the circumstances.

 (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the digital platform industry and deals with that matter or those matters. A standard under this subclause is to be known as a ***misinformation standard***.

 (3) If the ACMA is satisfied that a body or association represents that section of the digital platform industry, the ACMA must consult the body or association before determining a standard under subclause (2).

Subdivision B—Variation and revocation of misinformation standards

51 Variation of misinformation standards

 (1) The ACMA may, by legislative instrument, vary a misinformation standard that applies to participants in a particular section of the digital platform industry if it is satisfied that it is necessary or convenient to do so to provide adequate protection for the community from misinformation or disinformation on digital platform services of those participants.

 (2) Before varying the standard, the ACMA must consider:

 (a) whether the standard (as varied) would burden freedom of political communication; and

 (b) if so, whether the burden would be reasonable and not excessive, having regard to any circumstances the ACMA considers relevant.

52 Revocation of misinformation standards

 The ACMA may, by legislative instrument, revoke a misinformation standard.

Subdivision C—Compliance with misinformation standards

53 Compliance with misinformation standard

 (1) If:

 (a) a misinformation standard that applies to participants in a particular section of the digital platform industry is determined under this Part; and

 (b) a digital platform provider is a participant in that section of the digital platform industry;

the provider must comply with the standard.

Civil penalty provision

 (2) Subclause (1) is a civil penalty provision.

Designated infringement notice provision

 (3) Subclause (1) is a designated infringement notice provision.

Warnings

 (4) If the ACMA is satisfied that a digital platform provider has contravened subclause (1), the ACMA may issue a formal warning to the provider.

 (5) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subclause (4) is taken to be a notice under this Schedule.

54 Remedial directions—contravention of misinformation standard

Scope

 (1) This clause applies if:

 (a) a misinformation standard that applies to participants in a particular section of the digital platform industry is determined under this Part; and

 (b) a digital platform provider is a participant in that section of the digital platform industry; and

 (c) the ACMA is satisfied that the provider has contravened, or is contravening, the standard.

Remedial directions

 (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the standard, or is unlikely to contravene the standard, in the future.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

 (3) A digital platform provider must not contravene a direction under subclause (2).

Civil penalty provision

 (4) Subclause (3) is a civil penalty provision.

Notice

 (5) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a direction under subclause (2) is taken to be a notice under this Schedule.

Division 6—Register of misinformation codes and misinformation standards

55 ACMA to maintain Register of misinformation codes and misinformation standards

 (1) The ACMA is to maintain a Register in which the ACMA includes:

 (a) all misinformation codes registered under this Part; and

 (b) all misinformation standards; and

 (c) all requests made under clause 38; and

 (d) all notices under clause 39.

 (2) Paragraph (1)(a) does not require the ACMA to continue to include in the Register a misinformation code, or a provision of a misinformation code, removed from the Register under clause 42.

 (3) The Register is to be maintained by electronic means.

 (4) The Register is to be made available for inspection on the internet.

Division 7—Miscellaneous

56 Misinformation standards prevail over inconsistent misinformation codes

 If a misinformation code is:

 (a) registered under this Part; and

 (b) applicable to a digital platform provider;

the code has no effect to the extent to which it is inconsistent with a misinformation standard that is:

 (c) determined under this Part; and

 (d) applicable to the provider.

Part 4—Miscellaneous

57 Service of notices by electronic means

 Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to:

 (a) a notice under this Schedule; or

 (b) a notice under any other provision of this Act, so far as that provision relates to this Schedule.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

58 Service of summons, process or notice on corporations incorporated outside Australia

Scope

 (1) This clause applies to:

 (a) a summons or process in any proceedings under, or connected with, this Schedule; or

 (b) a notice under this Schedule; or

 (c) a notice under any other provision of this Act, so far as that provision relates to this Schedule;

where:

 (d) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and

 (e) the body corporate does not have a registered office or a principal office in Australia; and

 (f) the body corporate has an agent in Australia.

Service

 (2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.

 (3) Subclause (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

59 Relationship with other laws

 (1) This Schedule does not limit the operation of Part 13 of this Act or Schedule 8 to this Act.

 (2) This Schedule does not limit the operation of Part 9 of the *Online Safety Act 2021*.

 (3) This Schedule does not limit the operation of the *Commonwealth Electoral Act 1918*, the *Referendum (Machinery Provisions) Act 1984* or the *Telecommunications Act 1997*.

60 Implied freedom of political communication

 (1) The provisions of:

 (a) this Schedule; and

 (b) the digital platform rules; and

 (c) any misinformation code registered under Part 3; and

 (d) any misinformation standard;

have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication.

 (2) Subclause (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

61 Acquisition of property

 The provisions of:

 (a) this Schedule; and

 (b) the digital platform rules; and

 (c) any misinformation code registered under Part 3; and

 (d) any misinformation standard;

have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

62 Concurrent operation of State and Territory laws

 It is the intention of the Parliament that this Schedule is not to apply to the exclusion of a law of a State or Territory to the extent to which that law is capable of operating concurrently with this Schedule.

63 Schedule not to affect performance of State or Territory functions

 A power conferred by this Schedule must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory or the Australian Capital Territory.

64 Digital platform rules

 (1) The ACMA may, by legislative instrument, make rules (the ***digital platform rules***) prescribing matters:

 (a) required or permitted by this Act to be prescribed by the digital platform rules; or

 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

 (2) To avoid doubt, the digital platform rules may not do the following:

 (a) create an offence or civil penalty;

 (b) provide powers of:

 (i) arrest or detention; or

 (ii) entry, search or seizure;

 (c) impose a tax;

 (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

 (e) directly amend the text of this Act.

 (3) Digital platform rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but digital platform rules are taken to be consistent with the regulations to the extent that the digital platform rules are capable of operating concurrently with the regulations.

Schedule 2—Consequential amendments and transitional provisions

Australian Communications and Media Authority Act 2005

1 Section 3 (subparagraph (b)(i) of the definition of *authorised disclosure information*)

After “or 13 of”, insert “, or Schedule 9 to,”.

2 After paragraph 10(1)(ma)

Insert:

 (mb) to assist bodies or associations that the ACMA is satisfied represent sections of the digital platform industry to develop codes under Part 3 of Schedule 9 to the *Broadcasting Services Act 1992*;

 (mc) to develop standards under Part 3 of Schedule 9 to the *Broadcasting Services Act 1992*;

 (md) to monitor compliance with misinformation codes, misinformation standards and digital platform rules;

 (me) to conduct investigations relating to misinformation and disinformation on digital platform services;

 (mf) to inform itself and advise the Minister in relation to misinformation and disinformation on digital platform services;

 (mg) to make available to the public information about matters relating to misinformation and disinformation on digital platform services;

3 Paragraph 53(2)(k)

After “Schedule 8” (wherever occurring), insert “or 9”.

Broadcasting Services Act 1992

4 Title

Omit “**and content services**”, substitute “**, content services and digital platform services**”.

5 After paragraph 3(1)(hb)

Insert:

 (hc) to encourage digital platform providers to protect the community against harm caused, or contributed to, by misinformation and disinformation on digital platform services; and

6 Subsection 3(2)

Insert:

***digital platform provider*** has the same meaning as in Schedule 9.

***digital platform service*** has the same meaning as in Schedule 9.

***disinformation*** has the same meaning as in Schedule 9.

***harm*** has the same meaning as in Schedule 9.

***misinformation*** has the same meaning as in Schedule 9.

7 After subsection 4(3AB)

Insert:

 (3AC) The Parliament also intends that digital platform services be regulated, in order to prevent and respond to misinformation and disinformation on the services, in a manner that:

 (a) has regard to freedom of expression; and

 (b) respects user privacy; and

 (c) protects the community and safeguards end‑users against harm caused, or contributed to, by misinformation and disinformation on digital platform services; and

 (d) enables public interest considerations in relation to misinformation and disinformation on digital platform services to be addressed in a way that does not impose unnecessary financial and administrative burdens on digital platform providers; and

 (e) will readily accommodate technological change; and

 (f) encourages the provision of digital platform services to the Australian community; and

 (g) encourages the development of technologies relating to digital platform services.

8 Subsection 4(4)

Insert:

***digital platform provider*** has the same meaning as in Schedule 9.

***digital platform service*** has the same meaning as in Schedule 9.

***disinformation*** has the same meaning as in Schedule 9.

***harm*** has the same meaning as in Schedule 9.

***misinformation*** has the same meaning as in Schedule 9.

9 Paragraph 5(1)(a)

Omit “and the online content service industry”, substitute “, the online content service industry and the digital platform service industry”.

10 Subsection 5(4)

Insert:

***digital platform service*** has the same meaning as in Schedule 9.

11 Subsection 6(1) (definition of *newspaper*)

Before “means”, insert “, other than in Schedule 9,”.

12 Subsection 204(1) (at the end of the table)

Add:

|  |  |  |
| --- | --- | --- |
| To give a remedial direction | Subclause 16(2), 44(2) or 54(2) of Schedule 9 | The person to whom the direction was given |
| Variation of a remedial direction | Subclause 16(2), 44(2) or 54(2) of Schedule 9 | The person to whom the direction was given |
| Refusal to revoke a remedial direction | Subclause 16(2), 44(2) or 54(2) of Schedule 9 | The person to whom the direction was given |
| Refusal to register a misinformation code or part of a misinformation code | Subclause 37(3) of Schedule 9 | The body or association that developed the misinformation code |

13 After subsection 204(4)

Insert:

Decisions under the digital platform rules

 (4A) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the ACMA under the digital platform rules, so long as those rules provide that the decision is a reviewable decision for the purposes of this section.

14 Subsection 204(5) (heading)

Repeal the heading, substitute:

Definitions

15 Subsection 204(5)

Insert:

***digital platform rules*** has the same meaning as in Schedule 9.

16 Subsections 205F(4) and (5)

Omit “or subclause 25(1) or 26(4) of Schedule 8”, substitute “, subclause 25(1) or 26(4) of Schedule 8 or subclause 15(1), 16(3), 18(5), 19(5), 43(1), 44(3), 53(1) or 54(3) of Schedule 9”.

17 After subsection 205F(5D)

Insert:

 (5E) The pecuniary penalty payable by a person in respect of:

 (a) a contravention of subclause 15(1) or 16(3) of Schedule 9; or

 (b) a contravention of section 205E that relates to a contravention of subclause 15(1) or 16(3) of Schedule 9;

must not exceed:

 (c) if the person is a body corporate—5,000 penalty units; or

 (d) if the person is not a body corporate—1,000 penalty units.

 (5F) The pecuniary penalty payable by a person in respect of:

 (a) a contravention of subclause 18(5) or 19(5) of Schedule 9; or

 (b) a contravention of section 205E that relates to a contravention of subclause 18(5) or 19(5) of Schedule 9;

must not exceed:

 (c) if the person is a body corporate—40 penalty units; or

 (d) if the person is not a body corporate—30 penalty units.

 (5G) The pecuniary penalty payable by a person in respect of:

 (a) a contravention of subclause 43(1) or 44(3) of Schedule 9; or

 (b) a contravention of section 205E that relates to a contravention of subclause 43(1) or 44(3) of Schedule 9;

must not exceed:

 (c) if the person is a body corporate—the greater of:

 (i) 10,000 penalty units; and

 (ii) 2% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the contravention occurred; or

 (d) if the person is not a body corporate—2,000 penalty units.

 (5H) The pecuniary penalty payable by a person in respect of:

 (a) a contravention of subclause 53(1) or 54(3) of Schedule 9; or

 (b) a contravention of section 205E that relates to a contravention of subclause 53(1) or 54(3) of Schedule 9;

must not exceed:

 (c) if the person is a body corporate—the greater of:

 (i) 25,000 penalty units; and

 (ii) 5% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the contravention occurred; or

 (d) if the person is not a body corporate—5,000 penalty units.

 (5J) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

 (a) supplies made from any of those bodies corporate to any other of those bodies corporate;

 (b) supplies that are input taxed;

 (c) supplies that are not for consideration (and are not taxable supplies under section 72‑5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

 (d) supplies that are not made in connection with an enterprise that the body corporate carries on.

 (5K) For the purposes of subsection (5J), it is immaterial whether the supplies were made, or are likely to be made, within or outside Australia.

 (5L) Expressions used in subsections (5J) and (5K) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in those subsections as they have in that Act.

 (5M) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of subsection (5J) in the same way as for the purposes of the *Corporations Act 2001*.

18 At the end of section 205PA

Add:

• The Federal Court may also grant injunctions in relation to contraventions of certain provisions of Schedule 9 (which deals with digital platform services).

19 Section 205Q

Omit “or subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6”, substitute “, subsection 121FG(3), section 136A, 136B, 136C, 136D or 136E, subclause 49(3) of Schedule 6 or subclause 15(1), 43(1) or 53(1) of Schedule 9”.

20 Section 205XA

After “designated infringement notice provision”, insert “(other than a designated infringement notice provision in Schedule 9)”.

21 Subsection 205Y(3)

Omit “subsection (4)”, substitute “subsections (4) and (5)”.

22 At the end of section 205Y

Add:

 (5) Subsection (4) does not apply in relation to a contravention of a designated infringement notice provision in Schedule 9.

23 After paragraph 205ZA(1)(aa)

Insert:

 (ab) if the infringement notice relates to subclause 15(1), 16(3), 43(1), 44(3), 53(1) or 54(3) of Schedule 9 and the person is a body corporate—60 penalty units; or

 (ac) if the infringement notice relates to subclause 18(5) or 19(5) of Schedule 9 and the person is a body corporate—8 penalty units; or

 (ad) if the infringement notice relates to subclause 18(5) or 19(5) of Schedule 9 and the person is not a body corporate—6 penalty units; or

24 Paragraph 205ZA(1)(a)

Omit “subclause 25(1) of Schedule 8”, substitute “a provision mentioned in paragraph (aa), (ab), (ac) or (ad)”.

25 Section 216E (heading)

Omit “**(online content services)**”, substitute “**(online content services—gambling promotional content)**”.

26 Schedule 8 (heading)

After “**services**”, insert “**(gambling promotional content)**”.

27 After clause 30 of Schedule 8

Insert:

31 This Schedule does not limit Schedule 9 (digital platform services)

 This Schedule does not limit the operation of Schedule 9.

Online Safety Act 2021

28 Section 231 (heading)

After “**Schedule 8**”, insert “**or 9**”.

29 Section 231

After “Schedule 8”, insert “or 9”.

Telecommunications Act 1997

30 Section 116 (heading)

Omit “**codes and standards under Part 9 of**”, substitute “**certain codes and standards under**”.

31 Section 116

After “code registered, or standard determined, under Part 9 of”, insert “, or Schedule 9 to,”.

32 Transitional provisions

Misinformation and disinformation

(1) Subclauses 7(1) and (2) of Schedule 9 to the *Broadcasting Services Act 1992* as amended by this Act apply in relation to any content disseminated using a digital service, whether disseminated before or after the commencement of this item.

Information gathering

(2) For the purposes of subparagraphs 18(1)(a)(i) and 19(1)(a)(i) of Schedule 9 to the *Broadcasting Services Act 1992* as amended by this Act, it does not matter whether the information or document came into existence before or after the commencement of this item.