

ABC Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

September 2024

Introduction

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to contribute to the Senate Environment and Communications Legislation Committee's inquiry into the provision of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024.

As a national public broadcaster, the ABC is an active participant in the Australian media ecosystem and provides services to the Australian public using broadcasting and online platforms. It is the country's most trusted source of news and information, delivering news that is timely, accurate, impartial and objective.

Public access to reliable information is foundational to a well-functioning democracy. Misinformation and disinformation directly challenge this, including when disseminated over the online platforms that are the subject of this Bill. These challenges are potentially amplified by generative artificial intelligence (AI) technologies, which may lead to a significant increase in the volume of misinformation and disinformation in circulation.

The ABC welcomes the Australian Government's recognition that issues relating to misinformation and disinformation are a cause for concern that requires policy attention, while also noting the need to balance other important public policy objectives such as protecting freedom of speech.

The ABC has engaged with a number of government consultation processes in relation to regulating online disinformation and misinformation. These include the consultation process on the development of the Australian Code of Practice on Disinformation and Misinformation (ACPDM) by Digital Industry Group Inc. (DIGI) in 2020 and the 2022 review of that Code. In August 2023, the ABC made a submission to the Department of Infrastructure, Transport, Regional Development and the Arts in response to the prior version of this Bill that was released as an exposure draft.

Principles for approaching the Bill

The ABC remains supportive of the following propositions in shaping an appropriate policy framework to deal with misinformation and disinformation on digital platforms:

- (a) Digital platforms providers should adopt and continue to develop robust systems and measures to address misinformation and disinformation on their services.
- (b) A broad range of digital platforms should be encouraged to:
 - (i) adhere to an effective code of practice addressing misinformation and disinformation; and
 - (ii) provide greater publicly available reporting on the volume and nature of misinformation and disinformation on their services, including Australia-specific data and subject matter categories, to enable more useful comparisons and a greater understanding of the nature and prevalence of misinformation and disinformation.
- (c) Definitions of misinformation, disinformation and excluded categories of content should be based on objective criteria and observable conduct, rather than any subjective intent of the disseminator or creator of content. Reliance on subjective criteria is likely to make it more difficult for digital platform providers to effectively operationalise the policy intent of reducing the proliferation of disinformation and misinformation online.
- (d) Digital platforms should have effective systems and complaints processes to deal with concerns about the presence of misinformation and disinformation on their services as well as any inadvertent removal or demotion of legitimate content.

The Corporation understands that it is intended that its services and content be excluded from the scope of the Bill. However, there are several ways in which Bill as drafted may affect its activities. These unintended consequences are described below.

Definition of media sharing services

Clause 5 of proposed Schedule 9 establishes definitions of a range of types of “digital communications platforms”. These include “media sharing services”, which are digital services whose primary function is to “provide audio, visual (animated or otherwise) or audio-visual content to end-users” (paragraph 5(5)(a)). This definition would include the ABC iview video-on-demand and ABC listen audio-on-demand services.

However, any media sharing service that does not have an “interactive feature” is exempted from the Bill’s misinformation and disinformation scheme by

paragraph 12(1)(b). According to the explanatory memorandum (EM) to the Bill, this is intended to exclude “podcasts that do not have an interactive feature, or platforms such as broadcast video on demand or subscription video on demand television” as “an interactive feature is the mechanism by which misinformation and disinformation can be spread, including at scale” (EM, pp 34–5).

The definition of an interactive feature is set out in clause 6. Most relevantly, interactive features include the ability for an end-user to post content on the digital service (par 6(a)) and/or the digital service making interactions by end-users with content provided on the service observable to other end-users (par 6(c)(ii)). Such descriptions appear broad enough to encompass reactions and “likes”.

The ABC has previously experimented with user interfaces for ABC iview that allow users to record that they “like” or “dislike” programs. It may seek to do so again in future.

Further, the Corporation has also previously operated services, such as ABC Open, which was explicitly designed to enable members of communities around Australia to upload content they had created so that it was visible to other users. The service included options to comment on content. ABC Open was intended to create a digital public space that furthered civic discourse and creativity within Australia. It was comprehensively moderated by the ABC and operated in accordance with ABC Editorial Policies.

Were the Corporation to operate ABC Open today — or were the ABC to seek to develop another service similarly focused on fostering civil participation — it appears likely that it would not be exempted under paragraph 12(1)(b) and would thus be subject to the requirements of the Bill’s scheme, including a requirement that the Corporation develop or operate the service under an ACMA-administered industry code.

The ABC’s content is already subject to a legislated self-regulatory model that includes oversight by the ABC Board, Parliamentary scrutiny via the Senate Estimates process, and a complaints appeal process that includes the ACMA. As a result of its statutory obligations, the Corporation maintains editorial policies that maintain the highest editorial standards and an effective complaints-handling process, as well as rigorously moderating any audience-contributed content or comments that appear on its platforms.

Making ABC content also subject to a misinformation and disinformation scheme that is primarily intended to bring some modicum of regulation to services that are currently essentially unregulated would thus appear to be unnecessary duplication.

Further, such an outcome would also make the Corporation subject to content regulation by the ACMA in relation to any such services, which would be contrary to the principle of ABC independence.

The Corporation proposes that the Bill exclude all services that it operates from the scheme. This could plausibly be achieved by inserting new paragraphs 12(1)(d) and 12(2)(d) that read “a digital service operated by the Australian Broadcasting Corporation”. The ABC notes that a similar exclusion might also be made for other media services that are likewise already subject to regulatory settings that can be expected to prevent misinformation.

Excluded dissemination

Clause 16 sets out categories of content the dissemination of which is excluded from the obligations placed on regulated providers and the ACMA’s powers under the Bill, namely content that would reasonably be regarded as parody or satire, professional news content, and the reasonable dissemination of content for any academic, artistic, scientific or religious purpose.

It is clear that this clause is intended to provide an exclusion for the Corporation’s news and information outputs on digital communications platforms, as the definition of “professional news content” explicitly includes news content produced by a person who is subject to “rules of a code of practice mentioned in paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983*” (ABC Act).

However, the ABC Code of Practice developed under paragraph 8(1)(e) of the ABC Act only applies to the ABC’s broadcasting services. The Corporation’s digital services are, like all content that it produces, acquires and/or provides to audiences, subject to the ABC Editorial Policies.

While it may be argued that the Editorial Policies are considered to be ‘analogous’ to the ABC Code of Practice under subparagraph 16(2)(b)(iv), for the avoidance of doubt, the Corporation proposes that subparagraph 16(2)(b)(iii) be amended to refer to the ABC Editorial Policies rather than the ABC Code of Practice. This would ensure that the legislative intent to exclude the ABC’s news and information services on digital communications platforms is achieved.

In addition, the ABC would welcome amendments to the exemption under clause 16 to also include factual and documentary content produced either by the ABC or by an independent production company for the ABC. Any such content is subject to the same rigorous editorial policies as ABC-produced news and information content. However, as the Bill is currently drafted:

- factual and documentary content, particularly content of a historical nature, may not satisfy the requirements of the definition of “news content” in subclause 16(3), which is weighted towards current issues and events; and
- it is not clear that factual and documentary content would be covered by subclause 16(2) where the ABC itself has not produced the content but has commissioned or acquired the content from a third-party producer.

ACMA information gathering powers

Clauses 33 and 34 in proposed Schedule 9 would provide the ACMA with broad information-gathering powers, including the ability to seek information and documents not only from digital communication platform providers, but also from other persons.

As the ABC has previously argued, the information-gathering powers in the Bill should be subject to similar limitations as those under Part 13 of the *Broadcasting Services Act 1992* (BSA), which apply in relation to the ACMA's broadcasting, content and datacasting functions. Most notably, Part 13 of the BSA provides for the protection of journalists' sources. Equivalent protections for journalists' sources should also be provided in respect of the information-gathering powers in the Bill.