

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

Submission

11 October 2024

[Public
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Journalism
Initiative]

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1. Introduction

The Public Interest Journalism Initiative (PIJI) welcomes the opportunity to make this submission to the Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions] (**Bill**)

PIJI is platform-neutral and size-neutral with respect to news supply. With no commercial interests, our activities focus on optimal fiscal and regulatory measures that will support a diverse news marketplace and enable news media to innovate, grow and serve in its role as a public good for the Australian community.

PIJI strongly supports building an evidence base to guide new policy and assess existing policies and interventions. We have been undertaking work to support this goal since our founding in late 2018.

In preparing the following comments, PIJI is guided by the key defining principles that inform all our work: to act in the public interest; to ensure plurality of news production and neutrality of support; and to be independent, practical and evidence-based in consideration of any option.

This submission is structured as follows:

Section 1: Introduction

Section 2: General Comments

Section 3: Recommendations

Section 4: The role of Counter-Narratives

Section 5: About the Public Interest Journalism Initiative

PIJI continues to release new data analysis on the state of Australia's news market. We would be pleased to provide further updates as we release our September Quarterly report for 2024 and otherwise on request from the Committee.

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2. General comments

The technological advances of the past two decades have allowed misinformation and disinformation to proliferate at unprecedented speed and scale. Under a constant deluge of unreliable information, it is becoming harder for citizens to know what is true and what is not.

But falsehoods must still find an audience willing to believe them. If the critical information needs of a society are already met by credible and trusted sources, misinformation and disinformation are less likely to gain traction.

Liberal democracies have long relied on news outlets to meet those critical information needs. In particular, they have relied on public interest journalism, that subset of the news that reports, records and investigates the issues that citizens need to understand.

At its best, public interest journalism provides us with a shared baseline of agreed facts about our society and demands transparency and accountability from those in power. In doing so, it builds the narrative that our democratic institutions are strong and our society is functioning as intended. That narrative has been society's strongest abiding defence against misinformation and disinformation for generations.

But that defence is weakening in Australia and in liberal democracies around the world. The outlets that produce public interest journalism are struggling to maintain the flow of critical information to their audience in the face of plummeting advertising revenues and shifting consumption habits.

As public interest journalism retreats, the narrative of strong institutions and accountable government retreats with it. Alternative narratives ranging from the mischievous to the sinister will inevitably fill that vacuum, motivated by vested interests and partisan political considerations. Those narratives provide the fertile ground in which misinformation and disinformation can take root, undermining our social cohesion, economic stability and national security.

There is a place for regulation of online falsehoods, particularly those that directly lead to serious offline harm, and in that regard this Bill represents an important step forward, facilitating greater transparency from platforms about their systems and processes for dealing with harmful content that appears and spreads on their services.

But we encourage the Committee to take a multi-pronged approach to this challenge and frame the Bill as one important tool in the wider context of the fight against online misinformation and disinformation. Looking beyond this legislation, we would like to see the Committee recommend a renewed, whole-of-government focus on enhancing the prevalence and reliability of public interest journalism, so that it can sustainably provide the counter-narratives that stop online falsehoods from taking root in the first place.

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3. Recommendations

3.1. Previous Submission

Our [previous submission](#) in August 2023 contained ten recommendations:

1. Provide more guidance on the applicable ‘contains’ false information standard within the definition of misinformation.
2. Consider the removal of the distinction between misinformation and disinformation in the Bill but retain the concept of ‘intent’ in measures for harmful content and actors circulating harmful content.
3. If separate definitions of mis – and disinformation are maintained, develop guidance on how user intent will be established and operationalised and release this guidance for further public consultation. Provide additional guidance around the instances where mis- and disinformation are covered differently under the new ACMA powers.
4. While supportive of the expanded definitions of harm, determine language around hatred and vilification that is consistent with existing legal frameworks.
5. Exclude social and political issues not related to protected attributes or democratic processes and institutions from the Bill.
6. Consider the definition of ‘connective media services’ with regards to the use of instant messaging services as larger-scale distribution platforms.
7. Provide further definition on key terms such as ‘group’, ‘social media’ and ‘publicly open conversation’.
8. Examine the necessity for the proposed expansion of the ACMA’s information-gathering powers from misinformation to any information that is false, misleading or deceptive. If necessary, include examples in the guidance note to assist understanding.
9. Adopt the proposed definition of professional news content but add the oversight of an external complaints process to the professional standards test.
10. Any regulated frameworks, codes and industry standards require a mandated review after a specified time period.

We welcome amendments to the Bill that have moved in the direction of our recommendations, including:

- Additional clarity in the definition of misinformation;
- Amendments to definition of serious harm; and
- The mandated review of the operation law’s operation.

Where our recommendations have not been taken up, we do not intend to relitigate them here, save for certain areas where we believe changed circumstances, or the significance of the issue, warrant additional review.

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3.2. Additional Recommendations

3.2.1. Professional News Content

List of Codes and Standards

As previously submitted, PIJI supports the classification of professional news content as excluded dissemination for the purposes of the Bill under Section 16. A number of editorial rules and standards already apply to the production of professional news content; those are more appropriate mechanisms for ensuring news integrity than this Bill, which is designed to investigate and hold accountable the systems and processes of multinational digital platforms.

We note, however, that Section 16(2)(b) of the Bill contains an inclusive, rather than exhaustive, list of the codes and standards to which a person must be subject in order to qualify as excluded dissemination. For example, neither the Media Entertainment and Arts Alliance Journalist Code of Ethics, nor the various codes registered with the ACMA that apply to the Community Broadcasting sector are referenced in the relevant section.

While we recognise that section 16(2)(b)(iv) is intended as a catch-all provision for analogous rules, the ambiguity risks differential enforcement for news sources whose codes are not specifically referenced, particularly on platforms that may not be familiar with the full range of Australian codes and standards.

External Complaints Mechanism

Since our first submission, the Digital News Report 2024 from the University of Canberra - which has been widely cited in parallel Parliamentary inquiries and across mainstream media – has reported an alarmingly high and unprecedented level of public distrust in news.¹ In light of this, we reiterate our recommendation that a person or organization must have a publicly-available, easily-accessible external complaints mechanism to qualify as excluded dissemination. This is an important tool in the battle to arrest the decline of public trust in news. If trust in news continues to deteriorate, it will become increasingly difficult to reestablish the shared fact base that builds our society's resilience against misinformation and disinformation.

Recommendations:

1. Amend Section 16(2)(iv) to include all relevant codes registered with ACMA, Fair Work Australia and any other statutory body with the power to regulate registered organizations.
2. Require that each person seeking classification for excluded dissemination under Section 16 has a publicly available, easily accessible method of receiving external complaints.

3.2.2. ACMA's Information Gathering Powers

We remain concerned at the breadth of information gathering powers granted to ACMA by Division 3, Subdivision B of the Bill. As noted above, PIJI's primary concern is to build public trust in the institutional strength of our democracy as our first line of defence against misinformation and disinformation.

Transparency, accountability and respect for human rights in the exercise of power are hallmarks of that institutional strength.

¹ Park, S., Fisher, C., McGuinness, K., Lee, J., McCallum, K., Cai, X., Chatskin, M., Mardjianto, L. & Yao, P. (2024). Digital News Report: Australia 2024. Canberra: News & Media Research Centre, University of Canberra p 112 ff

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In particular, we note:

- The extremely broad capture of the power to require “information or a document relevant to misinformation or disinformation”
- The absence of parliamentary oversight or review in relation to the exercise of these powers;
- The absence of any requirement that personally identifiable information or other sensitive information be exempted from disclosure or anonymized.

Recommendation:

3. More clearly define the limits, oversight and human rights protections to which the exercise of ACMA’s powers will be subject.

3.2.3. Mandatory Review Period

As noted above, we welcome the inclusion of a mandatory review of the Bill’s operation. We submit, however, that the review should commence sooner than three years after Commencement.

The News Media Bargaining Code, itself an example of unique legislation applying to digital platforms, included a mandated review period of 12 months. Given the relative scarcity of global precedents for laws targeting misinformation and disinformation, and the potential risks to free speech if implementation is sub-optimal, a more timely review seems appropriate.

Two years should be ample time to assess the efficacy and consequences of many features of the Bill, including ACMA’s information gathering powers and the grant of excluded dissemination status to producers of professional news content.

Recommendation:

4. Require a review of the operation of the Bill no later than two years after Commencement, retaining the subsequent reviews at three-year intervals.

4. The role of counter-narratives

Mechanisms to slow the spread of online misinformation and disinformation - such as this Bill or professional fact-checkers - are crucial components in the overall fight against misinformation, particularly in the context of major society-wide events such as elections, natural disasters and pandemics.

But given the scale of digital platforms today - with hundreds of millions of posts made and messages sent each day - the prevalence and persuasiveness of misinformation and disinformation cannot be addressed by policing the accuracy of individual posts alone.

In their study of US political communications architecture from 2015 to 2017, “Network Propaganda”, Harvard University academics Yochai Benkler, Robert Faris, and Hal Roberts noted that “the most effective propaganda generally builds on a core set of true facts and then constructs a narrative that is

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materially misleading.”² This type of content is perhaps too complex to be properly understood through the ‘true-false’ binary that typifies fact-checking or many common regulatory responses.

Claire Wardle, the co-founder of the Information Futures Lab at the School of Public Health at Brown University argues that the ongoing focus on discrete instances of misinformation is misguided: “people aren’t influenced by one post, so much as they are influenced by the narratives these posts fit into.”³

The best defence against online falsehoods and the narratives that support them is a strong counternarrative. A democratic society has no better institution for crafting narratives than public interest journalism. At its best, public interest journalism can slowly and deliberately reinforce the narratives that support and strengthen the institutions of our democracy; it can earn trust and credibility with the public through sustained, professional dedication to accurately recording, reporting and investigating the issues that communities need to understand.

As Claire Wardle remarked in the same piece:

“[There has been] an outsized focus on platforms, filters, and regulation—that is, how to expunge the “bad stuff” rather than how to expand the “good stuff.” Instead of pursuing such whack-a-mole efforts, major funders should find a way to support specific place-based responses for what communities need. It won’t be achieved with national regulation targeting tech companies or bad actors.

This Bill promises to make some headway in the battle to slow the proliferation of misinformation and disinformation (i.e. the “bad stuff”). To complement any gains this Bill achieves, we must simultaneously address the declining ability of Australia’s news media industry to produce sustainable, reliable public interest journalism (the “good stuff”) that blunts the impact of misinformation and disinformation before it has a chance to take root.

The Australian news industry is showing early signs of market failure. Without wholesale transformation of the news sector and its business models, news producers will not have sufficient resources to produce the robust public interest journalism our society will require in the coming years.

And this challenge extends to news demand, not just supply. The Digital News Report shows steadily high levels of news avoidance, and suggests many citizens, particularly young people, are not distinguishing between professional news content and other less credible information they encounter online when forming their opinions on the issues that matter to them.⁴

Collectively, we need to future proof public interest journalism now to reinforce the distinct role that it plays in meeting citizens’ critical information needs. A sustainably resourced, diverse, accessible news media ecosystem dedicated to this task, and operating to appropriate corporate governance and professional standards, will lead to increased civic engagement, more accountable government and safer, more resilient communities.

² Benkler, Yochai, Robert Faris, and Hal Roberts. *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics*. New York: Oxford University Press, 2018, p 366

³ <https://issues.org/misunderstanding-misinformation-wardle/>

⁴ Park, S., Fisher, C., McGuinness, K., Lee, J., McCallum, K., Cai, X., Chatskin, M., Mardjianto, L. & Yao, P. (2024). *Digital News Report: Australia 2024*. Canberra: News & Media Research Centre, University of Canberra, 19

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5. About the Public Interest Journalism Initiative

The Public Interest Journalism Initiative (PIJI) is a specialist think tank advancing a sustainable future for public interest journalism in Australia. Through our research and advocacy, we seek to stimulate public discussion and establish optimal market pre-conditions in investment and regulation that will sustain media diversity and plurality in the long term. PIJI is a registered charity with the ACNC under the charitable category of ‘advancing education’ (ABN 69 630 740 153). It is a philanthropically funded, non-profit company limited by guarantee governed by a Board of independent directors, advised by an Expert Research Panel and Policy Working Group and regulated by the ACNC, ATO and ASIC.

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