

Senate Environment and Communications Legislation Committee:
Communications Legislation Amendment (Combatting Misinformation and
Disinformation) Bill 2024

Response to questions on notice

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Question: How important is it for researchers to have greater access to data related to the large media platforms to ensure they can be held accountable and do you think this bill is an appropriate way to facilitate this data access?

- We consider it vital that platforms be required to provide data access to researchers from both academia and civil society. This is essential for both platform and ACMA accountability.
- We agree with Reset.Tech that it is critical that platforms be publicly accountable. Just as we expect government to be accountable to the public for any impositions it makes on human rights, including the freedom of expression, to the extent that platforms also impact rights, they should be accountable to the public.
- Data access ensures the possibility of independently verifying the claims digital platforms make in their transparency reports and other communications, for example about the operation of their algorithms, as well as the assessments ACMA will make of platform performance.
- Researchers have expertise and analytical tools that enable them to undertake robust assessments of platform performance.
- As one of the objectives of the bill is “to increase transparency regarding the way in which digital communications platform providers manage misinformation and disinformation”, the bill is an appropriate way to facilitate this data access.
- ACMA information-gathering powers are limited to misinformation and disinformation as defined under the bill. As set out in our submission, we consider this scope limitation to be problematic. One reason it is problematic is that to know where to draw the threshold of what is to count as misinformation, one needs to be aware of what falls below the threshold as well as what passes above it. Given the dynamic nature of misinformation and the need for contestability in what is assessed as misinformation, a broad scope of information access is necessary.

- Even if it is considered appropriate to limit ACMA powers to misinformation and disinformation, there is no reason to make the same limitation for research purposes. Aside from accountability under the bill, data access is vital for researchers to conduct fundamental research on the online information environment, promoting understanding of not just misinformation and disinformation as defined under the bill, but the full range of impacts of that environment on human rights and on the public sphere. It is also essential for understanding the current sociopolitical environment.
- Data access has been decreasing, e.g. through the deprecation of the Twitter API and Crowdtangle. Without the access provided via these mechanisms, the extensive research on misinformation and other online harms over the past decade and more would not have been possible. The decrease in transparency – as well as other transparency concerns raised by ACMA and EU regulators shows that we cannot expect platforms to be transparent of their own accord.
- There are privacy concerns with data access, but these can be mitigated with an appropriate framework for providing access. The EU’s Digital Services Act is an example of how this might work.

Question: How should serious harm be defined?

- It is difficult to define serious harm. In our view this is one reason why definitions of serious harm, and of misinformation and disinformation, should not be used to try to tightly define the scope of ACMA power. Instead, ACMA powers should be constrained by provisions such as those in clause 67 and 68 in the current bill as well as by an obligation to consider impacts on the freedom of expression.
- A second reason is that what is taken to be misinformation and disinformation, whether in individual instances or more generally, should always be contestable. An additional protective mechanism, as set out in our submission and discussed in our evidence, would be an independent body that could provide advice to both ACMA and platforms on whether the lines are being drawn in an appropriate place. This would take the responsibility for setting the boundaries of acceptable speech away from ACMA, which would then focus only on whether platforms had appropriate systems in place, including responsiveness to the advice of the independent body, as well as transparency over the operation of algorithms and content-moderation policies.