

## Australia: Proposed changes to digital regulation

The Australian Government has introduced a raft of new digital legislation, including to combat misinformation and disinformation, and hate speech. It has also announced plans for minimum age requirements for social media.

### In brief

September is turning out to be a significant month for developments to digital regulation in Australia:

1. The first-tranche of long-anticipated reforms to the *Privacy Act 1988* (Cth) was announced, which include both the anti-doxxing and the statutory tort of invasion of privacy, as discussed in our client alert [here](#).
2. A proposal to introduce a federal minimum age requirement for social media has been **announced**, although the details of this proposal are not yet known.
3. A revamped bill on misinformation and disinformation (*Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024* (Cth) ("**Misinformation and Disinformation Bill**") has been introduced to Parliament. It seeks to combat misinformation and disinformation on "digital communication platforms", and contains various amendments to the exposure draft bill which was released for public consultation in last year.
4. The *Criminal Code Amendment (Hate Crimes) Bill 2024* ("**Hate Crimes Bill**"), which aims to strengthen existing legislation to combat hate crimes against targeted groups, has also been introduced to Parliament.
5. Finally, on 13 September 2024, the Government opened public consultation on the new proposed Scams Prevention Framework.

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### Key takeaways

The proposed age-based ban on social media is expected to set a minimum age requirement between 14 and 16 years. This will be guided by the age assurance trial (for which the Government is currently **seeking tenders**), and a draft framework bill and report from South Australia which contemplated a state-specific, age-based social media ban.

Responding to feedback on the draft exposure bill released in June 2023, the revised Misinformation and Disinformation Bill makes some amendments to the definition of "misinformation" and "disinformation", introduces a definition of "serious harm", increases transparency requirements, and empowers the ACMA to make digital platform rules and mandatory misinformation standards, if misinformation codes are not approved by the ACMA.

The newly proposed Hate Crimes Bill strengthens existing offences by lowering the threshold from "intent" to "recklessness" where a person urges another to use force or violence, expands distinguishing factors of targeted groups to include sex, sexual orientation, gender identity, intersex status, and disability, and introduces a new offence for threats to use force or violence against a member or group.



## In depth

### 1. Proposed social media ban

On 10 September 2024, the Australian Government **announced** it will introduce federal legislation this year to enforce a minimum age for access to social media and other relevant digital platforms in Australia. It is speculated "other relevant digital platforms" refers to gaming and that the minimum age will likely be set **between 14 and 16 years**. However, the details of the legislation will be informed by the age assurance trial, and engagement with the States and Territories, including South Australia where a similar state-based proposal is being considered.

#### Age assurance trial

The age assurance trial was announced on 1 May 2024, following recommendation by the eSafety Commissioner ("**eSafety**") in her '**Roadmap for Age Verification**' report and alluded to in the Government's **response** to that report in August 2023. The trial will test the maturity, effectiveness, and readiness for use of available age assurance technologies that verify users' ages, for example between 13-16 years or over 18 years, in order to regulate users' access to age-restricted online content and social media. While social media companies are not required to participate in the trial, and testing is unlikely to occur directly on social media platforms, the results of the trial will likely assist in shaping the legislation to be introduced.

#### Phase 2 industry codes of practice

In parallel, various online industry bodies have been involved in developing the 'Phase 2' industry codes of practice ("**Phase 2 Codes**"), under the *Online Safety Act 2021* (Cth) ("**OSA**"). The Phase 2 Codes relate to measures aimed at preventing children from accessing or being exposed to age-inappropriate material online. Despite the overlap in aims, eSafety has **confirmed** that the age assurance trial will not specifically inform the development of the Phase 2 Codes, but rather assist industry in determining how it can comply with the Phase 2 Codes. Although the interaction between the Phase 2 Codes and the proposed age ban remains unclear, eSafety has **expressed reluctance** at imposing age-based restrictions during a parliamentary inquiry on 'Social Media and Australian Society' earlier this year.

#### Draft framework bill in South Australia

Elsewhere in Australia, a draft framework bill (*Children (Social Media Safety) Bill 2024*) ("**Bill**") prepared by the former High Court Chief Justice, the Honourable Robert French AC, was **released** by the Premier of South Australia. The Bill, which is intended to be an indicative model for legislation in South Australia, proposes to impose two statutory duties of care on social media service providers. Those statutory duties are to prevent access, and take all reasonable steps to prevent prohibited access, to social media services by children under the age of 14 and by children aged between 14 and 16 (if without parental consent). A breach of these duties would result in financial penalties and, more significantly, may constitute a statutory tort if mental or physical harm has been suffered by a child due to the breach. The South Australian Government is considering this Bill, but has **flagged its preference** is to "work in collaboration with other jurisdictions."

### 2. A revamped Misinformation and Disinformation Bill

Last year, the Australian Government released for public consultation an exposure draft bill intended to combat misinformation and disinformation on "digital platform services" (*Exposure Draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*) ("**Exposure Draft**"). The background and details regarding this Exposure Draft are discussed in our client alert [here](#). Over 2,000 public submissions were received as part of the consultation. Various concerns raised included the broad scope and content of the Exposure Draft, a lack of clarity on the digital platform services subject to the Exposure Draft, and areas of overlap between the Exposure Draft and existing legislation, such as the OSA.

A revised version of the Misinformation and Disinformation Bill was introduced to Parliament on 12 September 2024. Broadly, the Misinformation and Disinformation Bill has three main objectives:

- to empower the Australian Communications and Media Authority (**ACMA**) to require digital communications platform providers take steps to manage misinformation and disinformation risk on digital communications platforms;
- to increase transparency regarding the way in which digital communications platform providers manage misinformation and disinformation; and
- to empower users of digital communications platforms to identify and respond to misinformation and disinformation on digital communications platforms.

The key changes from the Exposure Draft include:



- **Application to "digital communications platforms" and "digital communications platform providers."** The Exposure Draft previously applied to "digital platform services." There is a slight amendment in terminology, as the Misinformation and Disinformation Bill now captures "digital communications platforms", but the previous definition of "digital platform services" has largely been retained. "Digital communications platform" includes a digital service that is: a connective media service, a content aggregation service, a media sharing service, a kind of digital service determined by the Minister, and an internet search engine service (which is a new addition to this definition). A "digital service" is a service that is provided to the public in Australia, and delivers content to persons or allows end-users access to content using an internet carriage service. It does not include a broadcasting or datacasting service.
- **Exemptions for certain digital communications platforms.** Email services, media sharing services that do not have an interactive feature, and any other digital service that the Minister determines is an excluded service for misinformation purposes will not be subject to the substantive requirements under the Misinformation and Disinformation Bill.
- **Revised definitions of "misinformation" and "disinformation."** The definitions largely remain the same, but now capture information that is "reasonably verifiable as false, misleading or deceptive", whereas, previously, it was information that is "false, misleading or deceptive". The dissemination of content such as parody or satire, professional news content, or content for academic, artistic, scientific or religious purposes (defined as "excluded dissemination") remains carved out from the definitions.
- **Introduction of a "serious harm" threshold to misinformation standards and codes.** Serious harm is newly defined in the Misinformation and Disinformation Bill. It acts as a guardrail to the ACMA's proposed powers in determining or varying a misinformation standard, and approving a misinformation code. That is, ACMA must be satisfied that the standard or code is reasonably appropriate and adapted to provide adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on digital communications platforms.
- **Increased transparency requirements.** Digital communications platform providers must ensure certain information is accessible to the public and on their platforms. This includes a report on the risks relating to misinformation and disinformation on the platform, the provider's policy or policy approach in relation to misinformation and disinformation, a current media literacy plan, and information specified in the digital platform rules (discussed below). Failure to comply with these requirements may result in remedial directions from the ACMA and civil penalties.
- **Digital platform rules.** The ACMA may make digital platform rules covering a wider range of requirements, including on risk management, media literacy plans, complaints and dispute handling, and the making and retaining of records. A breach of these rules will empower the ACMA to give remedial directions, and non-compliance with the rules and/or the directions will be subject to civil penalties.

The Misinformation and Disinformation Bill was introduced in the House of Representatives on 12 September 2024, where it was read a first time. The next parliamentary sitting is scheduled between 8 to 10 October 2024, where further debate may be heard.

### 3. Newly proposed Hate Crimes Bill

As foreshadowed earlier this year, the Australian Government introduced the Hate Crimes Bill to Parliament on 12 September 2024. The Hate Crimes Bill proposes to strengthen existing provisions in the *Criminal Code Act 1995* (Cth) ("**Criminal Code**"), create new offences, and expand the list of protected groups to align the federal legislation with similar State and Territory offences.

#### Amendments to the offences of urging violence and displaying of hate symbols

The Hate Crimes Bill proposes to amend sections 80.2A and 80.2B of the Criminal Code, which currently create offences where a person intentionally urges another person or group to use force or violence against a group or member of a group distinguished by race, religion, nationality, national or ethnic origin or political opinion.

The amendments propose to:

- substitute "intent" with the lower threshold of "recklessness", so that offences would apply where a person is reckless as to whether the force or violence urged against a group or member of a group will occur; and
- include sex, sexual orientation, gender identity, intersex status, and disability as additional distinguishing factors of a targeted group.

Additional distinguishing factors are also proposed to be included for the offence of publicly displaying prohibited hate symbols. The offence currently applies in circumstances where a reasonable person would consider such display likely to offend, insult, humiliate or intimidate a person who is a reasonable member of a group distinguished by race, colour, sex, language, religion, political or



other opinion or national or social origin. The Hate Crimes Bill proposes to include further distinguishing factors of sexual orientation, gender identity and intersex status.

#### New offences for threatening force or violence against groups or members of groups

Proposed new sections 80.2B and 80.22B of the Criminal Code would criminalise the threatened use of force or violence against groups or members of groups distinguished by the various factors (including the expanded factors discussed above), where a reasonable person who is a member of the targeted group would fear that the threat will be carried out.

Similar to the Misinformation and Disinformation Bill, the Hate Crimes Bill was introduced in the House of Representatives on 12 September 2024 and we anticipate further discussion during the next parliamentary sittings.

#### Keywords

Online Safety; Online Content; Digital Platforms; Regulation; Misinformation; TMT Featured Content; Content Moderation; Digital Transformation; Usual Language

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