

Snapshot

Misinformation and Digital Policy in Australia

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INTRODUCTION

Misinformation and Disinformation in Australia

The circulation of misinformation and disinformation online during election campaigns has been identified as a major problem in Australia. The 2023 referendum on the establishment of an Indigenous Voice to Parliament (the ‘Voice’ referendum) saw widespread circulation of online misinformation, particularly for the ‘No’ case. A Parliamentary Committee found that ‘the current online regulatory framework is insufficient to prevent the heightened dissemination of misinformation, disinformation, and racially abusive material during the referendum campaign’ (Browne, 2023).

The circulation of online misinformation during election campaigns has made it apparent that current regulations in Australia are inadequate. ResetTech Australia has observed that ‘with misinformation and disinformation production rising as key campaigning tactics, attacks on electoral integrity in particular have become attractive for opportunistic actors’ (Dawkins & Farthing, 2023). The Australian Parliament found that ‘few of the regulations

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and codes that apply to traditional media apply to the social media platforms' (The Senate Finance and Public et al., 2023, p. 51).

Trust in Australian Democracy and Social Cohesion

Australia has been a democratic country bound by a constitution and conducting free and fair elections since its foundation as the Commonwealth of Australia in 1901. The *Commonwealth Electoral Act 1918* has ensured free and fair elections in Australia for over a century, and the Australian Electoral Commission is highly regarded globally for its administration of electoral processes.

Concerns have been growing in recent years about political polarization, declining social cohesion, and greater challenges to democratic resilience. The Scanlon Foundation has found a significant decline in social cohesion in Australia over the period from 2020 to 2023, and a growing pessimism about the responsiveness of Australian institutions to making people's lives better (O'Donnell, 2023). It found distrust of government to be considerably higher among lower income people than among those on higher incomes. These threats to social cohesion and community resilience can promote distrust in the democratic process and the fostering of disinformation.

REGULATORY PREPAREDNESS, GAPS AND CURRENT INTERVENTIONS AND LIMITATIONS

Rules for Political Communication in Elections

Australian policies related to the conduct of elections and political communication during elections includes the *Commonwealth Electoral Act 1918*. The Act applies a series of rules to ensure trustworthy electoral processes and transparent political communication, so as to prevent fraud and manipulation and ensure public confidence in Australian democracy.

The *Broadcasting Services Act 1992* requires broadcasting services to act to promote ‘accuracy and fairness in news and current affairs programs’ (s. 123). Broadcasters are required to develop Industry Codes of Practice which are publicly available and registered with the Australian Communication and Media Authority (ACMA). The Australian Press Council (APC) has also developed Advisory Guidelines on Reporting Elections with general principles regarding accuracy, fairness and balance, integrity and transparency when applied to election reporting.

Rules Governing Online Disinformation

A major gap in the Australian framework is the absence of clear provisions regarding online misinformation and disinformation. The Digital Industry Group Inc. (DIGI) is a not-for-profit industry association advocating for the digital industry in Australia, whose members include Apple, Google, Meta, Microsoft, TikTok and (until late 2023) X. In February 2021 DiGI launched the *Australian Code of Practice on Disinformation and Misinformation*, which committed a diverse set of technology companies to reducing the risk of online misinformation causing harm to Australians.

In October 2023, the civil society organization Reset Tech Australia complained to DIGI about X removing a function allowing users to report tweets as misinformation or disinformation for investigation during the Voice to Parliament referendum. X failed to respond to the complaint, and in November 2023 the DIGI complaints subcommittee found that X had committed a serious breach of the Code and has refused to cooperate with DIGI. This led to X being removed as a signatory to the Code.

Code breaches by X revealed the limits of a self-regulatory Code when a major social media platform refuses to comply with the directives of an industry body with regulatory oversight. In its review of the DIGI Code in 2023, the ACMA recommended that the

Federal Government should provide the ACMA with reserve powers to register industry codes, enforce industry code compliance and make standards relating to the activities of digital platforms.

In 2024, the Federal Government proposed the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill to address the limits of the DiGi Code. The Bill aimed to combat seriously harmful misinformation and disinformation on digital communications platforms, by providing statutory guidelines outlining the responsibilities of digital platforms in managing and moderating content, as well as providing a legal framework to address the challenges posed by misinformation and disinformation. The bill provides a definition of disinformation as:

Content that is reasonably verifiable as false, misleading, or deceptive, provided to end-users in Australia, and likely to cause serious harm. Disinformation also includes the dissemination of such content with deceptive intent or inauthentic behavior, including that by or on behalf of a foreign power.

A recurring criticism of the legislation was that it blurred the lines between disinformation and legitimate statements of disagreement on contentious issues, thereby running the risk of unduly restricting freedom of speech and imposing political censorship (Storey, 2023). The Shadow Communications Spokesman David Coleman has described the Bill as ‘a terrible piece of legislation which will compromise the free speech of Australians, including political speech’ (Coleman, 2024).

As the Federal Government lacks a majority in the Senate, passage of legislation that is opposed by the Opposition parties requires the support of minor parties and independents. The Bill has been referred to the Senate Environment and Communications Legislation Committee, which will report to Parliament on 25 November 2024.

Rules Governing GenAI-powered Disinformation in Australia

There are as yet no specific laws combating Gen-AI powered disinformation in Australia. The Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 included several provisions that aimed to address the use of AI, generative AI, and bots in the context of misinformation and disinformation on digital communications platforms.

The Federal Government was unable to secure the passage of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill through the Parliament. It was opposed by Coalition and independent Senators as a threat to freedom of speech, while also opposed by the Greens for retaining a self-regulatory element. The legislation was withdrawn from the Parliament on 24 November 2024.

Australia has not committed to developing an Artificial Intelligence Act (AI Act) along the lines of those implemented in the European Union and Canada. Rather, it is seeking to coordinate legislation across a range of portfolios, including communications, education, industry and government services, to develop a whole-of-government AI strategy. To achieve this, the Department of Industry, Science and Resources (DISR) launched a consultation on Mandatory guardrails for safe and responsible AI. The DISR consultation recommended mandatory guardrails to promote the safe and responsible adoption of artificial intelligence in Australia.

DISR has also issued “The Voluntary AI Safety Standard” to provide practical guidance to all Australian organisations on how to safely and responsibly use and innovate with artificial intelligence. The standard consists of 10 voluntary guardrails that apply to all organisations throughout the AI supply chain. They include transparency and accountability requirements across the supply chain. They also explain what developers and deployers of AI systems must do.

DISR also concurrently issued the “Standard for AI transparency statements.” This document is designed to support the policy for responsible use of AI in government. This work follows the Australian Institute of Company Directors which, on 11 July 2024, issued its “Directors’ Guide to AI Governance”.

CONCLUSION AND RECOMMENDATIONS

Australia has a history of robust democracy and free and fair elections, and there is overall confidence among the public with the electoral system. At the same time, risks posed by online misinformation and disinformation for disrupting Australian democracy are considerable and emerge at a time when trust in government is declining and social cohesion is challenged.

There remains a patchwork of regulations that address political communication in elections, that largely relate to traditional media and not to the online environment. The self-regulatory approach of the Australian Code of Practice on Disinformation and Misinformation administered by DIGI has been in place since 2021, but the inability to sanction X for breaches of the Code exposed the limits of an industry-based approach.

The Federal Government sought to address the limitations of the self-regulatory Code by proposing Communications Legislation

Amendment (Combatting Misinformation and Disinformation) Bill. This Bill would have provided guidelines for the first time on what can constitute misinformation and disinformation and the potential to cause serious harm. It also contains provisions to extend the legislation to the use of automated systems, AI and Generative AI.

This withdrawal of misinformation legislation means that no new laws will be in place prior to the 2025 Federal Election. Issues associated with GenAI and disinformation and its threats to Australian democracy are unlikely to be addressed until after the 2025 Federal election.

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