

AEC submission to Senate Environment and Communications Legislation Committee

September 2024

Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions]

This submission highlights the Australian Electoral Commission's (AEC) key remarks on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions], noting the increasingly challenging information environment in which the AEC operates, and existing initiatives aimed at combatting misinformation and disinformation.

AEC operates in an information environment increasingly impacted by misinformation and disinformation

Electoral service delivery is more complex and unpredictable than ever, and the increase in misinformation and disinformation about the electoral process has the potential to impact electoral event delivery, as well as erode voters' trust in the legitimacy of results.

The AEC delivers elections in an evolving information and security environment. With access to thousands of sources of news and information, as well as online platforms where content can be publicly and instantaneously shared to a very large audience, Australians are being bombarded with information. The observable increase in disinformation, conspiracy theories and unsubstantiated claims in the domestic and international information environment is increasingly impacting people's understanding of, and trust in, Australia's federal electoral processes.

The prevalence of online misinformation and disinformation about electoral processes has led to an increase in conspiracy theory inspired protests and threats targeting participants in the electoral process – including AEC staff. Online false or misleading information about electoral processes invariably does not stay online, it can and does result in real world action and harm.

Electoral and referendum legislation

A critical and sometimes misunderstood aspect of the *Commonwealth Electoral Act 1918* (the Electoral Act) is that whilst it requires electoral communications be authorised, with one limited exception, it does not regulate truth in electoral communication. Furthermore, the High Court has found there is an implied freedom of political communication in the Commonwealth Constitution that limits the scope of the Parliament to make laws restricting political communications. The *Referendum (Machinery Provisions) Act 1984* acts in a similar way to the Electoral Act, in that while it does not regulate the truth in referendum communication, it does require referendum matters to be authorised.

While electoral laws do not regulate the truth of electoral communications, the Electoral Act does require electoral matter to be properly authorised to inform voters of the source of communication. In 2018, authorisation requirements were extended to modern communication channels, including social media.

The AEC is the subject matter expert and the authoritative source of electoral information and appropriately has a role to educate stakeholders, to promote authoritative sources of information, and to correct any disinformation about electoral processes.

AEC initiatives to combat misinformation and disinformation

AEC's Reputation Management System (RMS)

Electoral integrity relies on trust, and the AEC must go above and beyond to actively and transparently promote a positive, trusted reputation for the Australian electoral system. The AEC's Reputation Management System (RMS) vitally embeds electoral integrity across all facets of the AEC and has a firm focus on proactive management of misinformation and disinformation about the electoral process.

AEC's active media presence

The AEC maintains a prominent social media presence, actively monitoring and responding to content on its social media accounts where appropriate. The AEC's purpose-built Command Centre includes a dedicated media hub to quickly respond to electoral disinformation. Aligning with best practice in the dynamic information environment, the AEC continues to focus on pre-bunking potential areas of electoral misinformation and disinformation and proactively posting correct information to the AEC's social media channels.

Digital media literacy

The AEC delivers a range of electoral information and education programs, including AEC for School's Media Literacy in Democracy, which explores critical media literacy and the importance of investigating where information comes from online. Ahead of and during every electoral event since 2019, the AEC runs a 'Stop and Consider' campaign encouraging voters to check the source of electoral communications they encounter, to avoid being deceived or misled by disinformation and misinformation.

The AEC continues to examine the appearance and impact of digital media literacy campaigns undertaken by government bodies, electoral management bodies, and social media company media literacy campaigns. The AEC sees value in a whole-of-government approach to improving digital media literacy to improve the public's ability to identify disinformation and reduce its spread.

Engagement with online media platforms

The AEC invests in developing and maintaining productive relationships with online media platforms, working collaboratively wherever possible to counter false narratives online about the election process and to ensure the AEC remains the authoritative source of information for Australian voters. Protocols regarding content referrals remain active, however the AEC's capacity to positively impact the information environment is dependent on current legislative settings, and responsiveness of media platforms.

Several online platforms have voluntarily signed up to the Australian Code of Practice on Disinformation and Misinformation, and most platforms advertise that they have measures for mitigating threats to electoral integrity. However, it is often difficult for the AEC to determine how effective they are. Many platforms produce regular transparency reports, however there is limited visibility or insight into the treatment of data, how platforms make decisions about content moderation, and what is meant by moderation or enforcement.

As the digital information landscape evolves, the AEC will continue to develop and strengthen both new and existing relationships, and we welcome efforts that encourage platforms to maintain an information environment that provides voters with ready access to authoritative information about Australian electoral processes.

The AEC's industry engagement now also includes generative AI service providers, which are increasingly sources of electoral process information. Under current legislative settings, the AEC will have no role in relation to the regulation of AI-generated content beyond the authorisation requirements.

Disinformation Register

In response to the changing information environment, the AEC established a Disinformation Register to help defend the Australian electoral process from disinformation. Each federal electoral event, the Register lists prominent pieces of disinformation the AEC has discovered regarding the electoral process, alongside the correct, fact-based information. By listing and correcting electoral disinformation, the AEC is assisting to both debunk and pre-bunk false narratives about the electoral process.

Interagency approach

The AEC regularly engages with relevant partners across government, including through the Electoral Integrity Assurance Taskforce (EIAT), which provides coordinated information and advice to the Australian Electoral Commissioner on matters including the spread of misinformation and disinformation about the electoral process.

Transparency and accountability of digital platforms in response to misinformation and disinformation

The AEC welcomes the inquiry into government regulation and oversight of digital communications platform providers. The AEC is committed to combatting the negative impacts of misinformation and disinformation on electoral integrity, and the AEC's existing initiatives are undertaken within the parameters of electoral legislation and individual digital platform policy and process. The AEC sees value in considering legislation to increase the transparency and accountability of major digital platforms and their responses to electoral misinformation and disinformation.