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MS23-003399



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

To: The Hon Michelle Rowland MP, Minister for Communications (for decision)

Subject: Communications Legislation Amendment (Combatting Disinformation) Bill 2023 (the Bill)

Critical Date: Please action by **31 May 2023** to allow sufficient time for public consultation and to finalise the Bill ahead of introduction in the Spring Sitzings of Parliament.

Recommendation:

1. That you **agree** to the approach in the Exposure Draft (ED) Bill and the accompanying Guidance Note to provide the Australian Communications and Media Authority (ACMA) with powers to combat online dis- and misinformation (see **Attachments A and B**).

Agreed / Not Agreed

s34(3)

Signed / Not Signed

3. That you **agree** to release the ED Bill for public consultation should the Prime Minister agree to the minor policy changes.

Agreed / Not Agreed

4. That you **note** that the Department will prepare a media release and other material to support your release of the draft Bill subject to the Prime Minister's authority approval, with the details of the public consultation and its timing to be finalised with your Office.

Noted / Please Discuss

M. Rowland

The Hon Michelle Rowland MP

Date:

1/6/23

Comments:

Bill title should also reference
misinformation & minor edits in
insert w/ MO.

Key Points:

1. s34(2) s34(3) s34(2) This brief seeks your approval to the approach in the ED Bill and recommends that you write to the Prime Minister seeking authority to minor policy changes and advising of your intention to release the Bill should he agree.

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2. The draft ED Bill s34(3)
 - it provides the ACMA with a graduated set of new information gathering, record keeping, publishing and reserve code and standard making powers
 - focuses on systemic issues rather than individual pieces of content posted online
 - digital platforms continue to be responsible for the content they host and promote.

Additional policy authority:

3. Provisions have been included in the ED Bill s34(3)

These are relatively minor and provide enhanced transparency and clarity on the requirements of the code and standard making powers. s34(3)

4. **Attachment C** is a letter seeking the Prime Minister's approval to these changes and advising of your intention to release the ED Bill for public consultation. The detail of the letter has been agreed with the Office of Parliamentary Counsel.

Key sensitivities:

5. Given the nature of the harms that the Bill is seeking to address, consultation is likely to attract significant public interest and discussion. It is expected that stakeholder interest will fall into two categories: a) the substance of the Bill and how it will be operationalised and b) the broader policy question of the Government's involvement in addressing dis- and misinformation. These are addressed in turn.

6. **Operationalising provisions of the Bill:** The Additional Information section sets out the key issues (including legal issues where we have obtained advice from the Australian Government Solicitor). Particular issues that are likely to generate views include the size of civil penalties and that some foreign state-owned news outlets may be captured due to lack of editorial independence.

7. The potential size of civil penalties could generate strong views.
 - The proposed powers would enable a graduated approach to compliance and enforcement that is commensurate with the seriousness of the breach, including significant civil penalties for ongoing and systemic breaches of a code and standard.
 - For instance, the breach of a standard would be a maximum of 25,000 penalty units (\$6,875,000 in 2023) or 5% of global turnover (whatever is greater) for corporations. In the case of Meta, a 5% penalty based on its 2022 global turnover is \$5.8 billion.
 - The proposed penalty regime is similar to the *Sharing of Abhorrent Violent Material Act 2019* which has maximum penalty of 50,000 penalty units or 10% of global turnover (whatever is greater) for a corporation that fails to remove abhorrent violent material expeditiously.

8. **The role of government in addressing dis- and misinformation:** While the public debate in Australia regarding freedom of speech is not as shrill as in the United States (in particular), there is still a risk that these proposed powers could be perceived as a form of censorship. Further, following the COVID-19 lock-downs, there has been a notable rise in conspiracy theories being promulgated by Australians including the 'sovereign citizen' movements.

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9. A key lesson from the United States, where a Government-led Disinformation Governance Board was disbanded after three weeks, is the importance of transparency and responding promptly to counter claims about the Government's intentions. This will be critical given that consultation on the ED Bill will occur concurrently with the Australian Indigenous Voice to Parliament referendum process. Prior to public release of the ED Bill, the Department will work with your office to prepare media materials including Questions & Answers.

Proposed approach to consultation

10. It is recommended that consultation on the ED Bill be open for a period of six to eight weeks. The Department will accept public submissions and engage in targeted consultation including with industry (e.g. signatories and non-signatories of the voluntary code), civic groups s47C, and news organisations / factcheckers. Eight weeks consultation may risk the ability to finalise the Bill and to retain T-Status for the introduction of the Bill before 14 September 2023. However, at a minimum six weeks consultation is recommended.

Financial impacts: The ACMA will receive \$7.9 million over four years from 2023-24 to fund the implementation of the new powers with \$2.3 million in 2023-24 to be met from within the Communications portfolio. The Department will work with ACMA on cost recovery options.

Legal/Legislative impacts: The Bill includes a new schedule to the *Broadcasting Services Act 1992* and consequential amendments. The key legal issues are outlined in Additional Information.

s47C

We will separately prepare a media strategy and stakeholder analysis as part of the further briefing to support your announcement.

Consultation: ACMA, PM&C, OPC, AGD, OAIC, DFAT, Department of Finance.

Media Opportunities: Media materials will be prepared in consultation with your Office.

Attachments:

Attachment A: Exposure Draft Bill

Attachment B: Guidance Note to the Bill

Attachment C: Letter to the Prime Minister seeking policy authority approval

Attachment D: Comparison of the Bill and the voluntary industry code and EU code

Cleared By: Pauline Sullivan

Position: First Assistant Secretary

Division: Online Safety, Media and Platforms

Ph: 6271 s22(1) | Mob: s22(1)(a)(ii)

Cleared Date: 19 May 2023

Name: Andrew Hyles

Position: Assistant Secretary

Division: Platforms and News Branch

Ph: 6271 s22(1) | Mob: s22(1)(a)(ii)

Responsible Adviser: s22(1)(a)(ii)

PDMS Distribution List: Jim Betts, Richard Windeyer, Pauline Sullivan, Chris Burke, Andrew Hyles s22(1)(a), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii)

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ADDITIONAL INFORMATION**Key sensitivities*****Freedom of expression***

- To protect freedom of speech, the Bill has a number of statutory tests which requires the ACMA to consider whether a code or standard to be made or varied would burden the implied freedom of political communication which is an integral part of the Australian Constitution.

Platforms in scope

- The ACMA powers will apply to a range of digital platform services. This will include search engines and news aggregators, instant messaging services, social media, web-forums, dating sites, online peer-to-peer marketplaces, and podcasting services with an interactive feature.
 - *Excluded services:* the powers will not apply to SMS (text message), MMS (Multimedia message system), email, SVODs (subscription video on demand e.g. Netflix) and BVODs (broadcast video on demand e.g. ABC iView).
 - *Instant messaging services:* will be included in scope, with limitations to exclude the content of private messages and encryption. In the first instance, it is envisaged that the ACMA would use its information and record keeping powers to get insights on the extent of the disinformation on these services and the measures from the platforms. The codes and standards could require platforms to have measures in place to prevent the spread of misinformation such as educative material to protect users from online harm. The Digital Industry Group Inc. (DIGI) has resisted ACMA calls for instant messaging service to be included in the scope due to user privacy concerns.

Content exemptions

- The Bill will exempt certain content which is designed to strike an appropriate balance with the freedom of expression and the necessity to take the appropriate action to protect Australians from the serious harm of online dis- and misinformation on digital platforms.
 - *Electoral matter:* all electoral matter including authorised electoral communications such as political ads will be within scope of the information gathering and record keeping powers. This will provide insights on the extent of dis- and misinformation from this content and the responsiveness of platforms to take action, particularly during an election or referendum. Authorised election communications will be exempt from the code and standard making powers given potential federal truth in political advertising laws similar to SA and the ACT. All other (non-authorised) electoral matter will be within scope of the code and standard making powers if the content is disinformation. This could include foreign state actors, bots and AI which have an intent to deceive. It will be important to consult with the States and Territories.
 - *Professional news content:* the ACMA powers will not apply to professional news content. Professional news content, which is defined as ‘news content’ produced by a ‘news source’ who is subject to certain rules and has editorial independence from the subjects of the news source’s news coverage, will be exempt from the powers. This draws from the approach in the News Media Bargaining Code. However, this may result in news content from overseas state-owned news outlets such as RT and Global Times falling within scope of the powers given their lack of independence.

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Enforcement mechanisms and civil penalties

- The ACMA will have a range of enforcement mechanisms such as infringement notices, formal warnings, enforceable undertakings, injunctions, remedial directions and civil penalties.
- For serious contraventions of registered code or standard provisions, or the failure to comply with remedial directions, digital platforms would face civil penalties broadly in line with amounts in the European Union (EU) Digital Services Act, which has fines up to 6% of global company turnover.

Registered code – civil penalties	Industry standard – civil penalties
Maximum of 10,000 penalty units (\$2,750,000 in 2023) or 2% of global turnover (whatever is greater) for corporations or 2,000 penalty units (\$550,000 in 2023) for individuals.	Maximum of 25,000 penalty units (\$6,875,000 in 2023) or 5% of global turnover (whatever is greater) for corporations or 5,000 penalty units (\$1,375,000 in 2023) for individuals.
As an illustrative example, the global turnover of Meta's parent company (a 2% penalty based on its 2022 global turnover of US\$117 billion = US\$2.3 billion). In comparison, a fine of up to 6% in the EU equals US\$7 billion.	As an illustrative example, the global turnover of Meta's parent company (a 5% penalty based on its 2022 global turnover of US\$117 billion = US\$5.8 billion). In comparison, a fine of up to 6% in the EU equals US\$7 billion.

- However, the EU has a larger population base and the DSA also covers a wider range of harmful content than the ACMA powers such as illegal hate speech, child sex abuse material, terrorist content, misinformation and disinformation. The EU fines also only apply to Very Large Online Platforms (VLOPs).
- It will be important to consult on the size of the civil penalties as they stand in stark contrast to some other civil penalties under Australian law, for example:
 - *Broadcasting Services Act 1992*: a breach of a remedial direction for breach of a licence condition by a commercial television / person who is in a position to exercise control of a commercial television licence is up to 20,000 penalty units (\$5,500,000 in 2023).
 - *Online Safety Act 2021*: the civil penalties for individuals are up to 500 penalty units (\$137,500 in 2023) and up to 2,500 penalty units (\$687,500 in 2023) for corporations.
 - *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019*: the penalty for a corporation that fails to remove content expeditiously is up to 50,000 penalty units (\$13,750,000 in 2023) or **10% of the global annual turnover** of the company, whichever is greater. The penalty for an individual who fails to remove content expeditiously is up to 10,000 penalty units (\$2,750,000 in 2023) and 3 years' imprisonment. The proposed penalty regime is similar to these arrangements.

Voluntary code interaction

- The voluntary industry code will continue to operate unless the ACMA uses its reserve code and standard making powers. The information gathering and record keeping powers will apply to signatories and non-signatories of the code. The Bill has some differences with the voluntary code such as specifying types of harms, it applies to instant messaging services and fully excludes professional news content (see **Attachment D** for a detailed comparison).

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- The voluntary industry code captures a broader range of content given there are no exclusions from its definition of disinformation. For example, although professional news content or electoral content cannot be considered misinformation, this content is within scope of the voluntary code if it is disinformation. The ACMA powers will apply to non-signatories of the voluntary code to ensure transparency and to prevent existing signatories from withdrawing.
- If introduced early in the Spring Sittings, the Bill will likely coincide with the annual release of transparency reports by signatories of the voluntary code. Any messaging around the release of the Bill and transparency reports should focus on the powers strengthening the voluntary framework and promoting greater transparency particularly for non-signatories.
- The public consultation on the draft legislation is an important opportunity to consider feedback from stakeholders and the wider community to ensure there are no unintended consequences and that it enables the ACMA to effectively operationalise the new laws.

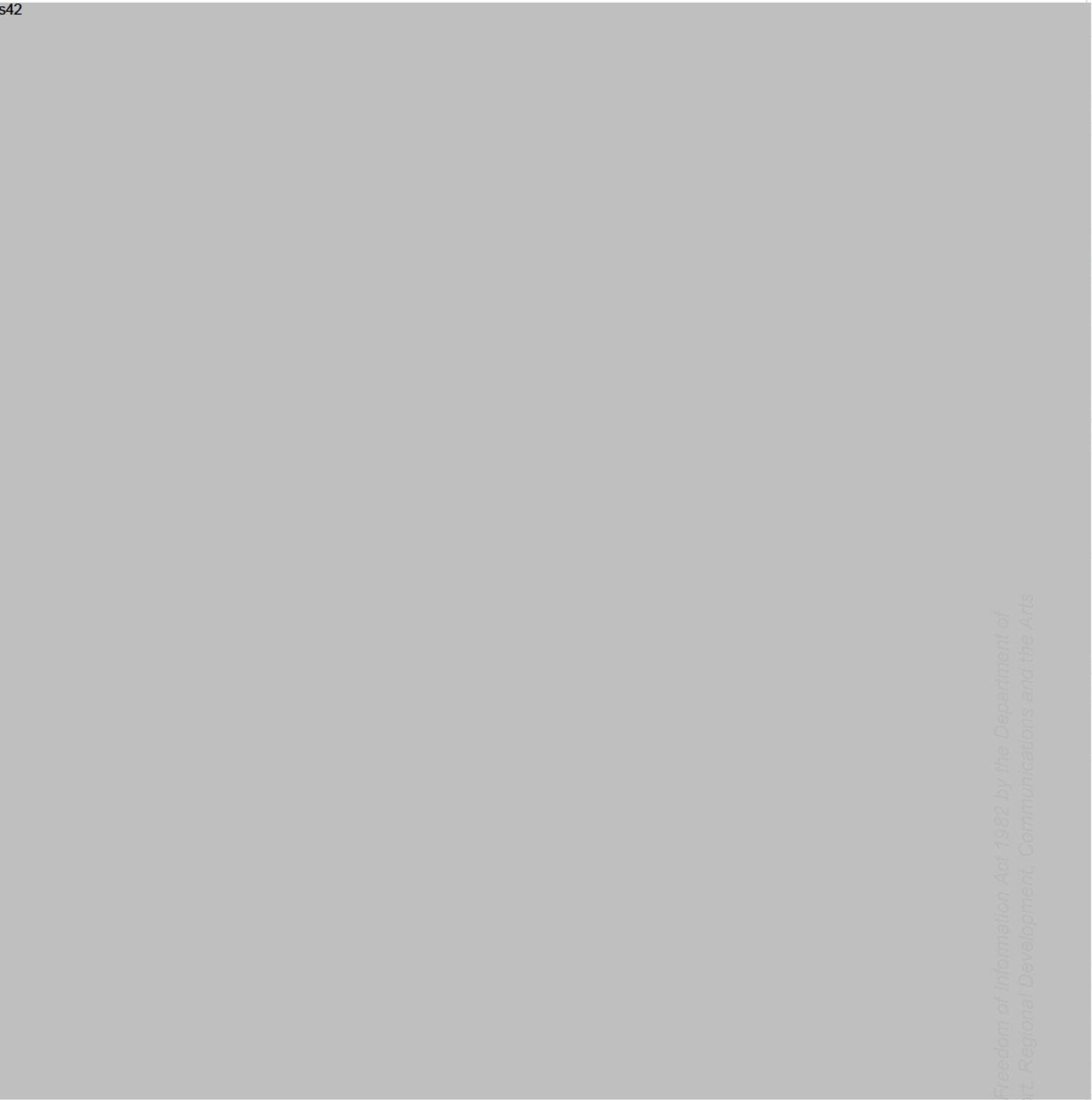
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Structure of the Bill:

The key elements of the Communications Legislation Amendment (Combatting Disinformation) Bill 2023 include:

Schedule 1: Main Amendments

- This part of the Bill introduces the main amendment - new Schedule 9 - Digital platform services, into the *Broadcasting Services Act 1992* (BSA). Proposed new Schedule 9 will consist of the following parts:
 - *Part 1 of Schedule 9* - Introduction: provides the simplified outline of the purpose of the Bill, includes definitions of key terms in Schedule 9, such as disinformation, misinformation, digital platform services, excluded digital services and excluded content.
 - *Part 2 of Schedule 9* - Information: has four divisions which sets the scope of the information powers and provides the ACMA with powers that allow it to make record keeping and reporting rules, gather information on an as needed basis and to publish information obtained from platforms.
 - *Part 3 of Schedule 9* - Misinformation codes and standards: has six divisions which sets the scope of the misinformation codes and standards powers, the sections of the industry to which the powers apply, matters that may be dealt with in a code or standard, limitations of the powers, and details relating to the code and standard making powers. The ACMA will be required to maintain a register of the codes and standards, and make it available for inspection on the internet.
 - *Part 4 of Schedule 9* - Miscellaneous: consists of miscellaneous provisions, including provisions which explain the interaction of the Schedule with other Commonwealth, State and Territory laws.

Schedule 2: Consequential amendments and transitional provisions

- This part of the Bill makes consequential amendments to the *Australian Communications and Media Authority Act 2005* (the ACMA Act), the BSA, the Online Safety Act 2021 and the Telecommunications Act 1997, as well as sets out transitional provisions.
 - It confers several new functions on the ACMA including to enable it to assist with industry code development, to develop standards, to monitor compliance with misinformation codes and standards, advise the Minister about online misinformation, and make available to the public information relating to misinformation and disinformation on platform services.
 - It includes changes to the BSA, including to add a new object - to encourage digital platform providers to protect the community against harm caused, or contributed to, by misinformation and disinformation on digital platform services. Amendments to the BSA also include outlining the Parliament's intention that digital platform services be able to be regulated in order to prevent and respond to misinformation and disinformation on the services; provisions that enable certain decisions by the ACMA to be merits reviewable; and the introduction of new civil penalty provisions.
- A Guidance Note to the Bill has been prepared by the Department at **Attachment B**, which will be released with the draft legislation to briefly explain and provide guidance on the main elements of the Bill.
- The structure and language of this Bill has been designed so that it can be expanded in future, for example to give the ACMA powers to combat scams on digital platforms.

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The Hon Michelle Rowland MP

Minister for Communications
Federal Member for Greenway

MS23-003399

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek your agreement to minor refinements in relation to the development of a new *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (at **Attachment A**).

In January 2023, the Australian Government announced that it will provide the Australian Communications and Media Authority (ACMA) with new powers to hold digital platforms to account and improve efforts to combat harmful mis- and disinformation in Australia.

The Government also committed to undertake public consultation on the powers through the release of an exposure draft of the Bill in the first half of 2023 and introduce legislation in Parliament later this year following consultation. s34(3)

s34(2) s34(3)

s34(3)

[Redacted content]

s47C

s34(3) with the details of the final Bill to be settled with you following the public consultation. I intend to introduce the legislation in the 2023 Spring Sitzings of Parliament and have recently submitted a T Status legislative bid.

The Hon Michelle Rowland MP
PO Box 6022, Parliament House Canberra
Suite 101C, 130 Main Street, Blacktown NSW 2148 | (02) 9671 4780

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With regard to the information gathering powers, s34(3)

In drafting the Bill, the ACMA recommended extending these powers to 'other persons' such as fact checkers and third-party platform contractors to monitor compliance with misinformation codes, standards and digital platform rules. The draft Bill would give effect to this suggested change, however to improve transparency, I would have the ability as the Minister to direct the ACMA to commence investigations under the *Broadcasting Services Act 1992* and generally under the *Australian Communications and Media Authority Act 2005* in relation to its new functions.

s34(3)

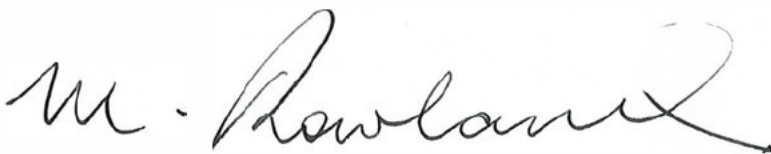
s42

In developing the draft Bill, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (my Department) has consulted with your Department, the ACMA, the Attorney-General's Department and the Department of Finance. In December 2022, my Department also released a consultation paper to several agencies seeking views on a range of sensitives about definitional and legal issues which have been considered as part of the drafting of the Bill.

The contact officer in my Department is Andrew Hyles, Assistant Secretary, Platforms and News Branch (02 6271 7707 or Andrew.Hyles@communications.gov.au).

If you approve of the approach outlined above and in the attachment to this letter, I will release the Bill for public consultation with the timing and details of the announcement to be settled with your Office.

Yours sincerely



Michelle Rowland MP

1 / 6 / 2023

Encl. Attachment A *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*
Attachment B Statement of reasons

Attachment B**Statement of reasons: Items requiring further minor policy approval****Definitions**

The concept of serious harm is a key element of the definition of dis- and misinformation under the proposed legislation s34(3)

[REDACTED]

[REDACTED]

[REDACTED]

s42, s34(3)

[REDACTED]

Powers of the Minister for Communications***The ability to specify an excluded digital platform service***

s34(3)

[REDACTED]

The Bill incorporates a minor change to this approach by giving the Minister an additional power to exclude digital platform services from the laws. This will allow the Government to be more targeted and flexible in responding to advances in technology, the risk of harm on digital platforms or changes in the regulatory environment.

The ability to direct ACMA to commence investigations

The Minister for Communications is able to request the ACMA to investigate matters under the *Broadcasting Services Act 1992* and to give general directions under the *Australian Communications and Media Authority Act 2005*. To ensure consistency with this existing regulatory approach, the Bill extends these existing powers to the ACMA's new regulatory functions on dis- and misinformation. This also includes matters brought to the Government's attention through public complaints or the media about online dis- and misinformation.

This will provide greater transparency and strengthen the powers to hold platforms to account. The Ministerial direction may specify the terms of reference for the investigation by the ACMA, including its scope and the timeframe for completion and any other particulars.

Information powers

Extension of information gathering powers to 'other persons'

s34(3)

The Bill includes an additional power that allows the ACMA to request information from 'other persons' such as fact-checkers or other third-party contractors to monitor compliance with misinformation codes, misinformation standards and digital platform rules. This would improve transparency and accountability with access to additional information providing scope for the ACMA to assess the validity of any claims made by digital platforms. It will also improve the ACMA's ability to assess whether signatories to the voluntary industry code are meeting their obligations.

Clarification that information gathering powers extend to documents and evidence

s34(3)

The Bill clarifies that these powers will apply to information, evidence or documents. This will provide the ACMA with a more complete picture of the matters that they are investigating and can be used to establish the facts, support any legal proceedings and to make more informed decisions on using its graduated powers.

The ACMA may give written notice to digital platforms or 'other persons' which specifies the manner of its request. The ACMA notice cannot require a person to give information or evidence, or produce a document or copy that reveals the content of a private message.

Collecting information that does not have a serious harm threshold

The information gathering and record keeping powers apply to the following types of matter:

1. misinformation or disinformation on the service;
2. measures implemented by the provider to prevent or respond to misinformation or disinformation on the service, including the effectiveness of the measures;
3. the prevalence of false, misleading or deceptive information provided on the service (other than excluded content for misinformation purposes).

s34(3)

The ACMA will have the ability to collect and monitor the prevalence of false, misleading or deceptive information, including online content that is not seriously harmful in and of itself.

In drafting the Bill, further consideration was given to providing the regulator with the ability to collect information about dis- and misinformation that may not meet this serious harm threshold. This is because the line between seriously harmful and harmful misinformation can sometimes be blurred. For instance, certain conspiracy theories may initially appear innocuous but create an environment of mistrust which has negative consequences for our democracy and way of life over time. The collection and monitoring of this type of information could provide insights for Government agencies in tailoring their policies to address this growing challenge.

Importantly, the ACMA will not be able to register enforceable codes or make standards unless the dis- or misinformation content has **reasonable likelihood of serious harm**.

Code variations

The ACMA will have the ability to register and approve variations to enforceable industry codes developed by the digital platform industry. s34(3)

In developing the Bill, the ACMA expressed concern that public consultation for every minor change would be an administrative burden on the industry and could slow down the process of making simple changes. It is expected such minor changes will be typically administrative or technical in nature and will not have a significant impact on the digital platform industry stakeholders. For instance, such minor changes may include corrections of errors and minor updates to references. The Bill does not require an industry body to consult on minor code variations before it is approved by the ACMA. However, the ACMA could require an industry body to consult on minor changes if it deems it necessary to do so.

Enforcement mechanisms

The ACMA will have various enforcement powers to ensure compliance with the new laws such as investigations, infringement notices, formal warnings, enforceable undertakings and civil penalties. A longstanding ACMA enforcement mechanism is its power to seek injunctions, which is a court order that may require an individual or company to stop doing something or to take specific actions. It is often sought as a preventative measure to stop ongoing harm or potential harm to consumers, the public interest, or the integrity of the communications sector. s34(3)

Non-user generated content

Non-user generated content on digital platforms includes content that is created by the platform or third-party professionals rather than being generated by users themselves. This content may include news articles by professional journalists and sponsored content by advertisers. s34(3)

While the Bill does not contain a specific exclusion for non-user generated content, it has a number of content exclusions for this type of content such as authorised electoral communications and professional news content.

Statutory tests

s34(3)

Statutory test	s34(3)	Minor policy changes or clarification
Requesting industry codes		<p>Clause 38 (3(a)) provides that the ACMA must not request industry to make a new code unless it is necessary or convenient to prevent or respond to dis- or misinformation on platforms or to address systemic issues in relation dis- or misinformation.</p> <p><i>Rationale:</i> Clarifies when the ACMA is able to request a code and provides added detail.</p>

Registering industry codes	s34(3)	<p>Clause 37 (1(e)) provides a condition that must be satisfied for the ACMA to register a code. This includes that the code (or part of) requires platforms to implement measures to prevent or respond to dis- or misinformation, enables assessment of compliance, provides adequate community protections.</p> <p><u>Rationale:</u> Clarifies the process of code registration.</p>
Making Standards		<p>Clause 45 requires that ACMA must consider if a standard would burden the freedom of political communication, and if that burden would be reasonable.</p> <p>Clauses 46 to 50 provides that ACMA may make industry standards if:</p> <ul style="list-style-type: none"> • if a request for a code is not complied with • no industry body or association is formed • total failure of a misinformation code • partial failure of misinformation code • emerging circumstances.
Misinformation or disinformation		<p>Determining if content is reasonably likely to cause or contribute to serious harm is done regarding a list of matters found in Clause 7(3).</p> <p><u>Rationale:</u> This definition of dis- and misinformation now includes a concept based on serious harm to be “reasonably likely.”s34(3)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Comparison of the DIGI Code and proposed ACMA Powers

	Australian Code of Practice on Disinformation and Misinformation	EU Code of Practice	New ACMA Powers	Key Differences
<u>Definitions</u>	<p>8 Signatories:</p> <ul style="list-style-type: none"> • Adobe • Apple • Meta • Google • Microsoft • Redbubble • TikTok • Twitter 	<p>34 Signatories:</p> <p>Major Platforms</p> <ul style="list-style-type: none"> • Google • Meta • Twitter • TikTok • Microsoft • Twitch • Vimeo • Clubhouse • The Bright App <p>Industry Groups</p> <ul style="list-style-type: none"> • DOT Europe <p>Trade Associations</p> <ul style="list-style-type: none"> • World Federation of Advertisers • European Association of Communications Agencies • Interactive Advertising Bureau <p>Web Portal</p> <ul style="list-style-type: none"> • Seznam • Neeva Search <p>Fact-Checkers</p> <ul style="list-style-type: none"> • Maldita • PagellaPolitica • Demagog • Faktograph <p>Ad Tech Providers and Industry Bodies</p> <ul style="list-style-type: none"> • MediaMath • DoubleVerify • GARM <p>Civil Society and Research</p> <ul style="list-style-type: none"> • Avaaz • Globsec • Reporters Without Borders • VOST Europe • Science Feedback • Alliance4Europe <p>Technology Solutions and Expertise</p> <ul style="list-style-type: none"> • Adobe • Crisp • Logically • Newsback • NewsGuard • WhoTargetsMe 	<ul style="list-style-type: none"> • Digital Platform Service: The definition of Digital Platform Services includes Content Aggregation Services, Connective Media Services and Media Sharing Services. 1. Content Aggregation Service: Content Aggregations Services collate and present content from a range of sources. This is intended to capture search engines and news aggregators. 2. Connective Media Services: Connective Media Services allow end-users to interact with each other online. The majority of digital platform services will fall into this category which includes instant messaging services, social media, web-forums and online peer-to-peer marketplaces. 3. Media Sharing Services: Media Sharing Services deliver audio, audio-visual and animated visual content and include podcasting services. • The Minister for Communications may also specify other service categories by legislative instrument. 	<p><u>DIGI Code vs. the ACMA powers</u></p> <ul style="list-style-type: none"> • The Digital Industry Group Inc (DIGI) has a voluntary industry code comprising digital platforms only. The code does not specify different categories of digital platforms. • In contrast, the new ACMA powers: <ul style="list-style-type: none"> – defines three digital service categories based on distinct primary features. The ACMA would be able to enforce codes and standards that apply to individual categories or the industry as a whole – would apply to signatories and non-signatories of the voluntary code – the Minister for Communications would be able to specify additional service categories to account for the rapid advancement of technology and development of new technologies. <p><u>European Union vs. Australian arrangements</u></p> <ul style="list-style-type: none"> • The EU Code of Practice is a voluntary code which includes a much broader range of signatories than the DIGI Code such as digital platforms, fact-checkers and civil society. • Under the EU Digital Services Act, there are mandatory obligations for 19 Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSE) with at least 45 million monthly online active users to respond to harms on their services. <ul style="list-style-type: none"> – the designated platforms undergo yearly independent audits of their own risk assessments of harm on their services – platforms can voluntarily sign up to the EU Code as a risk mitigation measure to ensure mandatory EU DSA compliance • The ACMA powers will not have user thresholds and will apply to a broader range of platforms than the 19 services in the DSA.
	<p>Digital Content: Content distributed online on a platform owned and operated by a Code Signatory that is targeted at Australian users. It includes content that has been artificially produced, manipulated or modified by automated means.</p>	<p>Content: The EU Code does not define content or digital content.</p>	<p>Content: Content is defined in the proposed powers as content in text, data, audio and visual forms including any combination of those specified and any not specified.</p>	<ul style="list-style-type: none"> • The digital content definition in the DIGI Code and the ACMA powers are broadly similar. However, digital content is not defined in the EU Code.

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<p>Misinformation: Digital Content that is verifiably false, misleading or deceptive; is propagated by users of digital platforms; and the dissemination of which is reasonably likely to cause Harm.</p>	<p>Misinformation: Misinformation is false or misleading content shared without harmful intent though the effects can be still harmful, e.g. when people share false information with friends and family in good faith.</p>	<p>Misinformation: Content that contains information that is false, misleading or deceptive; and the content is provided on the digital service to end-users in Australia and the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.</p>	<ul style="list-style-type: none"> • All definitions are broadly similar. • The ACMA powers deal with harm differently to the EU in that it must be serious and directed towards Australia. • The DSA does not define misinformation, the definition in the EU Code is drawn from the European Democracy Action Plan.
<p>Disinformation: Digital Content that is verifiably false, misleading or deceptive; is propagated amongst users of digital platforms via Inauthentic Behaviours; and the dissemination of which is reasonably likely to cause Harm.</p> <p>Inauthentic Behaviours: Spam and other forms of deceptive, manipulative or bulk, aggressive behaviours and includes behaviours which are intended to artificially influence users' online conversations and/or to encourage users of digital platforms to propagate Digital Content.</p>	<p>Disinformation: Disinformation is false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm. The definition of Disinformation also captures foreign interference in the information space.</p>	<p>Disinformation: Disinformation is content that is false, misleading or deceptive, the provision of the content is reasonably likely to cause or contribute to serious Harm and is disseminated on a digital service to end-users in Australia with the intent to deceive other users.</p>	<ul style="list-style-type: none"> • The DIGI Code definition is misinformation disseminated via inauthentic means. • The ACMA powers is misinformation disseminated with the intent to deceive. • The DSA does not define Disinformation, the definition in the EU Code is drawn from the European Democracy Action Plan. • The EU Code specifically requires Signatories to share information regarding foreign interference and incidents on their services to be reported through the permanent Taskforce. Under the ACMA powers, this could also be included as a code or standard.
<p>Harm: Harms are those which pose a credible and serious threat to:</p> <ul style="list-style-type: none"> • democratic political and policy making processes such as voter fraud, voter interference, voting misinformation. • public goods such as the protection of marginalised or vulnerable groups, public safety and security or the environment. 	<p>Harm: The EU Code and the DSA do not provide a definition of harm.</p>	<p>Serious Harm:</p> <ul style="list-style-type: none"> • hostility or hatred between groups in Australian society. • disruption of public order or society in Australia. • harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions. • harm to the health of Australians; • harm to the Australian environment. • economic or financial harm to Australians, the Australian economy or a sector of the Australian economy. 	<ul style="list-style-type: none"> • The DIGI Code's definition for Harms are not as specific as the proposed powers and only cover harms to democratic political and policy making processes or public goods. In contrast the proposed powers are more explicit and framed in broader terms with reference to what constitutes Harm. • The DSA does not define harm and instead outlines four categories of risk associated with the use of platforms and services including the circulation of illegal content and impact on rights and freedoms, democratic and electoral processes and public security and the protection of public health, minors and individual physical and mental health.
<p>Satire: Not explicitly defined although is referred to in the Code as content produced in good faith for entertainment (including satire and parody).</p>	<p>Satire: The EU Code does not define satire, although states that "Disinformation" does not include satire or parody.</p>	<p>Satire: Content produced in good faith for the purposes of entertainment, parody or satire.</p>	<ul style="list-style-type: none"> • Broadly similar. • Satire is not defined in the EU Code.
<p>Professional News: Online material produced by a News Source that reports, investigates or provides critical analysis of issues or events that are relevant in engaging end-users in public debate and in informing democratic decision-making; or current issues or events of public significance to end-users at a local, regional or national level.</p> <p>News Source: A journalistic producer of news that has editorial independence from the subjects of its news coverage and is subject to the Australian Press</p>	<p>Professional News: The EU Code does not define professional news although states that "Disinformation" does not include reporting errors or clearly identified partisan news and commentary.</p>	<p>Professional News Content: Professional News Content is news content produced by a news source subject to Australian Press Council Standards of Practice or the Independent Media Council Code of Conduct, Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice, the rules of a code of practice mentioned in the <i>Australian Broadcasting Corporation Act 1983</i> or the <i>Special Broadcasting Service Act 1991</i> or any rules or internal editorial standards that are analogous to these rules, codes of practice and standards.</p>	<ul style="list-style-type: none"> • The DIGI Code definitions for News Source is more closely aligned with the proposed powers definition for Professional News Content. • The DIGI Code definition of news content is less more flexible in what can be considered a News Source as the proposed powers definition requires Professional News Content to be bound by analogous to Australian codes and standards. This ensures

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	<p>Council Standards of Practice or the Independent Media Council Code of Conduct, the Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice or is subject to the rules of a code of practice specifying standards for editorial practice in another country, subject to internal editorial standards for quality journalism or provides a mechanism for complaints about the quality of its news coverage.</p>		<p>Professional News Content is also news content produced by a news source that has editorial independence from the subjects of the news source's news coverage.</p> <p>News Source: A News Source is newspaper masthead, magazine, TV or radio program or channel, website or audio or video program designed to be distributed over the internet that produces and publishes news content online.</p>	<p>a high-bar for the exclusion of Professional News Content.</p> <ul style="list-style-type: none"> The DIGI Code's definitions do not explicitly determine the types of News Sources in the same the proposed powers do. Professional news is not defined in the EU Code.
	<p>Educational Content: Does not explicitly define Educational Content.</p>	<p>Educational Content: The EU Code does not define educational content.</p>	<p>Educational Content: Educational Content is content produced by an educational institution accredited by a Commonwealth, State or Territory Government, or by a body recognised by the Commonwealth, a State or a Territory as an accreditor of educational institutions.</p> <p>International educational providers will need to be accredited by a foreign government, or by a body recognised by a foreign government as an accreditor of educational institutions. To be exempt, foreign accreditations should have substantially equivalent standards to Australian educational institutions.</p>	<ul style="list-style-type: none"> The ACMA powers have a definition for educational content. Educational content is not defined in the EU Code.
	<p>Excluded Services: Private messaging services, email services and Enterprise Services.</p> <p>The list of services included or excluded from the Code or not intended to be exhaustive and Code Signatories will have a role in identifying services to be covered by the Code.</p>	<p>Excluded Services: The EU Code does not exclude services from the scope of the Code and encourages wide participation from providers of online services that participate in the dissemination of content to the public in the EU information ecosystem.</p>	<p>Excluded Services: Email, and media services that do not have interactive features (such as Netflix), will not be covered by the powers.</p> <ul style="list-style-type: none"> The Minister for Communications may also exempt a Digital Platform Service from the proposed powers. 	<ul style="list-style-type: none"> DIGI wholly excludes private messaging from the code. Passive measures such as forwarding limits cannot be under the code. Signatories are able to exclude their services as they wish. The EU Code does not exclude services from its scope.
<p>Excluded Services and Content</p>	<p>Excluded Content:</p> <ul style="list-style-type: none"> Content produced in good faith for entertainment (including satire and parody). Educational content. Content Authorised by an Australian State or Federal Government. Political Advertising or content authorised by a political party registered under Australian law. Professional News Content. <p>While this content is not considered Misinformation, it may be considered as Disinformation if disseminated by Inauthentic Behaviours.</p>	<p>Excluded Content:</p> <ul style="list-style-type: none"> Misleading advertising. Satire and parody. Clearly identified partisan news and commentary. Reporting errors. 	<p>Excluded Content:</p> <ul style="list-style-type: none"> Satire. Educational Content. Professional News. Content Authorised by an Australian Government from the scope of the powers. <p>Shall not be considered misinformation or disinformation.</p> <p>Codes and standards will not be allowed to address electoral content, as defined by the <i>Australian Electoral Act 1918</i>, unless the electoral content is disinformation from an unauthorised source.</p>	<ul style="list-style-type: none"> Under the DIGI Code, content categories excluded from being considered misinformation may be considered disinformation if spread via inauthentic behaviours. The ACMA powers wholly exclude these categories from being considered misinformation or disinformation. Electoral content that is disinformation from an authorised source. While the EU Code excludes some types of content, it does not provide definitions. However, the EU DSA includes a broader range of content such as illegal hate speech, terrorist content, scams and child sex abuse material.

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<p>Transparency and reporting</p>	<p>Transparency Reports:</p> <ul style="list-style-type: none"> Signatories will nominate the provisions to which they commit to using the Opt-in Nominations Form. Signatories will annually re-assess the extent the provisions of the Code are relevant to their products and services (including whether any new products and services should be subject to the Code) and update and notify DIGI of any updates to the opt-in form. Signatories with more than one million active monthly users in Australia are required to report annually on progress made towards the commitments and Signatories with smaller user-bases will submit an initial report. 	<p>Transparency and Reporting:</p> <ul style="list-style-type: none"> Signatories to the EU Code are required to report on the Qualitative Reporting Elements (QREs) and Service Level Indicators (SLIs) aligned to the commitments and measures they have committed to within 6 months, (VLOPs are required to report at 6 monthly intervals while reporting is annual for non-VLOPs signatories). Signatories are required to specify which commitments and measures they sign up to and justify any opt-outs. VLOPs and VLOSE must sign up to all commitments and measures relevant to their services to use the EU Code as a mitigation measure for compliance with the DSA. Signatories must maintain and update the Transparency Centre website and publish the SLIs and QREs they have implemented to contribute to commitments and measures signed up to. Signatories commit to providing proportionate and appropriate information and data, including ad-hoc specific reports in special situations like elections or crisis and upon the request of the European Commission. 	<p>Record Keeping: The ACMA will have the power to make rules requiring digital platforms to keep and maintain information or records relating to misinformation on their services. This extends to records regarding the prevalence of false, misleading or deceptive information on the service, and measures taken by the provider to prevent or respond to misinformation and disinformation. The ACMA may require that information generated under these rules be reported to the ACMA on a periodic basis.</p> <p>Information Gathering: The proposed powers will provide ACMA with information gathering powers that could be used to compel digital platforms to provide information relating to false, misleading or deceptive information on the service, and measures to prevent or respond to misinformation or disinformation on the service.</p>	<ul style="list-style-type: none"> The DIGI Code relies upon platforms to honestly appraise themselves and has no universal metrics. An independent expert fact checks all signatories' transparency reports and provides an attestation of them. The ACMA powers will enable enforced, periodic reporting with standard metrics. The information gathering powers will also enable as-needed investigations. The EU Code contains a number of commitments and measures determining the specific requirements of VLOPs and VLOSE around transparency and reporting.
<p>Enforcement</p>	<p>The Code is entirely voluntary.</p>	<ul style="list-style-type: none"> Signatories commit to participating in a Taskforce consisting of Signatories and representatives of the European Digital Media Observatory, European Regulators Group for Audio-visual Media Services (ERGA) and European External Action Service (EEAS). Signatories commit to work within the Taskforce towards developing Structural Indicators, to assess the effectiveness of the Code in reducing disinformation for each of the relevant Signatories, the EU and at Member State level. VLOPs also commit to be audited at their own expense, for the purposes of compliance with the DSA. Audits must be performed by independent organisations with expertise in disinformation. The European Commission can impose fines of up to 6% of global turnover for VLOPs and VLOSE found to be non-compliant with the DSA. 	<ul style="list-style-type: none"> <i>Formal warnings:</i> notices issued to alert digital platforms or individuals of any non-compliance and their obligations under the information powers, and codes and standards. <i>Remedial directions:</i> a direction to digital platforms or individuals to take specific actions to remedy non-compliance. <i>Infringement notices:</i> a penalty notices issue to digital platforms or individuals for breaching certain obligations, with the aim of deterring future non-compliance. <i>Civil penalties:</i> financial penalties imposed by a court as a result of a breach of obligations and serve as a deterrent against future non-compliance. <i>Criminal penalties:</i> legal punishments imposed by the courts which can include fines, imprisonment, or both, depending on the nature of the offence. 	<ul style="list-style-type: none"> The ACMA powers are enforceable, the DIGI Code is not. The DSA recognises the full implementation of the EU Code as a risk mitigation measure for designated VLOPs and VLOSE for the purposes of compliance with the DSA. In the EU, VLOPs and VLOSE face penalties of up to six percent of digital platform services global turnover. Lesser breaches, such as giving incorrect information to the EU regulators may result in fines of up to one percent of platform annual turnover. However, this also applies to a wider range of harmful content such as illegal hate speech and child sex abuse material. In the ACMA powers, platforms that routinely contravene the codes and standards will face penalties of: <ul style="list-style-type: none"> Codes: 10,000 penalty units (\$2.8 million) or 2 per cent of global turnover whatever is greater for corporations Standards: 25,000 penalty units (\$6.9 million) or 5 per cent of global turnover whatever is greater for corporations There will be smaller fines for individuals.

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