



Terms of reference for Complaints Facility and Complaints Sub-committee | *The Australian Code of Practice on Disinformation and Misinformation*

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A. Purpose of this document

These **Terms of Reference** explain the types of complaints that DIGI can handle under its complaints facility, established under *The Australian Code of Practice on Disinformation and Misinformation* (the Code). The complaints facility has been established to resolve complaints about possible breaches by Signatories of their commitments under the Code. The Terms of Reference include information about:

- a) The aim and scope of the complaints facility;
- b) How complaints about breaches of the Code are handled; and
- c) The role and powers of DIGI's Complaints Sub-committee.

B. Glossary

Outlined below is a glossary of terms that are used in this document:

- a) **Administration Sub-committee** is a committee comprising one representative of DIGI, representatives from Signatories, and one or more independent members that are responsible for administration of the Code.
- b) **Annual report on Code administration** is a report by DIGI to be published on the DIGI website that will include information about the operation of the complaints facility.
- c) **Complaints facility** is an approach for dealing with eligible complaints (as described below).
- d) **Complaints handling policy** is DIGI's policy for handling complaints outlined in section D of these Terms of Reference.
- e) **Complaints Sub-committee** is a committee comprising at least two independent members established to determine complaints of material breaches of the Code that will operate on an as needed basis.
- f) **Eligible complaints** comprise complaints made by the public about either:
 - i) a material breach of the Code; and
 - ii) other types of eligible complaints.
- g) **In-eligible complaints** are complaints that do not meet the criteria for eligible complaints including:
 - i) Complaints by individuals about specific content or accounts on Signatories' products and services.

For example: a determination by a Signatory that specific items of content or categories of content is/ or is not disinformation or misinformation or a decision to remove an individual's account are not in scope. Those complaints will be handled by the Signatories under the policies and procedures for reporting issues they are committed to implement under in section 5.11 of the Code.

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- ii) Complaints about whether the Signatory's measures are adequate to achieve the outcomes of the Code.

***For example**, whether measures taken by Signatories have sufficiently reduced the exposure of platform users to the harms posed by disinformation and misinformation.*

- iii) Complaints that are already under consideration by a court, tribunal or regulatory body such as the ACCC, ACMA or Ombudsman or otherwise the subject of existing legal proceedings; and

- iv) Complaints about the administration of the Code including complaints about the operation of the complaints facility.

- h) **Independent members** are members appointed to the Complaints Sub-committee who are not currently employed within the industry, in either technology companies or representative bodies.

- i) **Other types of eligible complaints** are complaints about a possible breach of the Code that is not a material breach, usually in relation to a Signatory's opt-in commitments under the Code.

***For example:** a complaint that a Signatory has breached section 5.24 of the Code by not implementing measures to support and encourage good faith independent efforts to research disinformation and misinformation both online and offline.*

- j) A **material breach** of the Code comprises:

- i) A failure by a Signatory to comply with its commitments in relation to Outcome 1 of the Code (sections 5.8, 5.10, 5.11 and 5.13 of the Code).

***For example**, a failure to implement and publish policies, procedures and appropriate guidelines that will enable users to report the types of behaviours and content that violates their policies under section 5.10 of the Code.*

- ii) A failure to file a transparency report within three months of the due date set by DIGI.
- iii) A Signatory has, without reasonable excuse, provided materially false information in its transparency report about the measures that it has or will implement to comply with the Code commitments.

***For example**, a false statement in a transparency report (express or implied) that a policy or product has been implemented in Australia or had particular characteristics would likely be within scope.*

For example, a future change in a policy or product offering as stated in a transparency report would not be eligible, provided another policy or product offering is provided to meet the relevant commitment.

- k) **Public** means Australian citizens or permanent residents aged 18 years and older.
- l) **Unreasonable complainant conduct** is any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for DIGI, our sub-committee members or staff, Code Signatories, or the complainant.

Some examples include:

- i) *An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.*
 - ii) *Demanding a review simply because it is available and without arguing or presenting a case for one.*
 - iii) *Pursuing and exhausting all available complaint options when it is not considered warranted and refusing to accept that further action cannot or will not be taken on their complaints.*
 - iv) *Bombarding DIGI with multiple emails that are ineligible complaints, or do not constructively advance discussion in relation to eligible complaints (including cc'd correspondence).*
 - v) *Issuing instructions and making demands about how DIGI has/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.*
 - vi) *Demanding remedies that are of a nature or scale that DIGI cannot provide when this has been explained to them repeatedly.*
 - vii) *Displaying unhelpful behaviour – such as withholding information, acting dishonestly, or misquoting others.*
- m) **Systemic issues** are a volume of eligible complaints over a six-monthly period that in aggregate indicates that there are issues with a system, process or practice of one or more Signatories which compromise their ability to meet their commitments under the Code.

C. Aim and scope of complaints facility

- 1) The complaints facility will provide a facility for the efficient, economical and effective handling of eligible complaints by the public of breaches of Signatories' commitments to implement measures in relation to nominated outcomes and objectives under the Code. The aim of the complaints facility is to ensure Signatories comply with the Code.

- 2) Eligible complaints will be handled by DIGI in accordance with the complaints handling policy set out in Section D and where appropriate, by the Complaints Sub-committee in accordance with Sections E to H.
- 3) Only complaints that meet the defined threshold for eligible complaints are within the scope of the complaints facility.

D. Complaints handling policy

General

- 1) Complaints will be handled by DIGI and the Complaints Sub-committee in accordance with the policy set out in this Section D. This policy applies to the members of the Complaints Sub-committee, and all DIGI staff receiving or managing complaints from the public made to or about commitments made by Signatories under the Code.
- 2) The effectiveness and model of the complaints facility will be reviewed annually.
- 3) When developing procedures and policies for the complaints facility, and when handling complaints, DIGI and the Complaints Sub-committee will consider:
 - a) relevant laws;
 - b) good practice; and
 - c) what is fair and reasonable.

Types of complaints handled under the complaints facility

- 4) Only Australian citizens or permanent residents aged 18 years and older can make a complaint against a Signatory under the complaints facility. Parents or guardians that meet this requirement can also make a complaint on behalf of a minor aged 14 or older for whom they have legal responsibility.
- 5) DIGI and the Complaints Sub-committee only handle complaints that are eligible complaints, and do not handle in-eligible complaints.

When complaints can be made

- 6) DIGI only handles complaints about a Signatory if they are reasonably timely. When we receive a complaint we will look at the date that the complainant discovered the issue about which they are complaining. If it has been less than six months since that date, we can handle the complaint. Complaints that are made outside that time frame will not be handled by us.
- 7) DIGI will refer all eligible complaints to the Signatory to provide them with a reasonable chance to consider and respond to the complaint. What is reasonable will depend on the circumstances of the complaint including whether the complaint has been previously reported to the Signatory, the complexity of the issues raised in the complaint, when the

complainant identified the issue they are complaining about and the amount of evidence provided in support of the complaint. However, what is a reasonable chance to consider and respond to the complaint will not exceed six weeks.

- 8) DIGI may in our discretion refer in-eligible complaints to Signatories for their consideration to the extent practical, depending on the volume of in-eligible complaints, but will not otherwise be involved in the resolution of those complaints.

DIGI's initial process for handling complaints

- 9) This section explains how the public can make a complaint and how DIGI will handle the complaint.
- 10) The public may make eligible complaints via DIGI's website using the appropriate complaints form provided for that purpose.
- 11) The complainant can also ask someone else, such as their legal representative to complain to us for them. DIGI can ask for proof that the complainant has given their permission for us to deal with the other person.
- 12) All complaints will receive a response from DIGI that provides a brief explanation of complaint eligibility and time frames within which the complainant can expect an initial response from DIGI.
- 13) When DIGI receives an eligible complaint, we will assess whether it is an eligible complaint or an in-eligible complaint. If it is an eligible complaint we will also assess whether it is about a material breach of the Code or if it is another type of eligible complaint.
- 14) DIGI will only intervene in an eligible complaint after the Signatory has been notified of the complaint by DIGI and been given a reasonable opportunity to consider and respond to the complaint as set out in sub-section 7.
- 15) After the Signatory has been given a reasonable opportunity to consider and respond to the complaint, the Signatory must advise DIGI and the complainant whether it has resolved the complaint. If within thirty days of that advice the complainant advises DIGI that the complainant remains unsatisfied with the Signatory's response, the steps DIGI takes to handle the complaint will depend on whether it is about a material breach of the Code or it is another type of eligible complaint.
- 16) If the complaint is about a material breach of the Code, DIGI will deal with it as outlined in sub-sections 18 to 20 below.
- 17) If the complaint is about another type of complaint, DIGI will not further respond to the complainant directly but will record the complaint as set out in sub-section 21.

DIGI's handling of complaints of material breaches of the Code

- 18) On determining a complaint is about a material breach of the Code, DIGI will promptly advise the relevant Signatory in writing of the details the complainant has provided

regarding the complaint. DIGI will also give the Signatory written reasons for our assessment of the complaint.

- 19) DIGI will also promptly escalate complaints about material breaches of the Code to the Complaints Sub-committee for determination. DIGI will promptly advise the complainant and the Signatory of the date when the meeting of the Complaints Sub-committee to hear the complaint will take place (generally the next available quarterly meeting, depending on the volume of complaints before the Complaints Sub-committee).
- 20) The Complaints Sub-committee will investigate and resolve complaints about material breaches as further outlined in Part H.

DIGI's handling of systemic issues

- 21) DIGI will maintain a database that will record details of all eligible complaints. DIGI will aggregate and compile periodic reports of this data every six months. These reports will be provided to the Complaints Sub-committee so that they can assess if there are systemic issues with Code compliance.

E. Role of the Complaints Sub-committee

- 1) The role of the Complaints Sub-committee is to:
 - a) Investigate and resolve complaints about material breaches of the Code.
 - b) Provide reports and recommendations to DIGI the Administration Sub-committee, and impacted Signatories concerning the resolution of potential systemic issues.
 - a) Review and make recommendations to DIGI and the Administration Sub-committee regarding DIGI's handling of complaints.

F. Membership of Complaints Sub-committee

- 1) The Complaints Sub-committee is made up of at least two independent members who do not work within or represent relevant technology companies. Each independent member will also be required to declare any actual or potential conflict of interest as a condition of their appointment.
- 2) The role of secretary of the Complaints Sub-committee will be undertaken by a representative of DIGI.
- 3) The secretary may provide advice and recommendations to the Complaints Sub-committee regarding the operation of the Code, and will record minutes of meetings, and assist in documenting the sub-committee's decisions and reports.
- 4) The secretary is not a member of the Complaints Sub-committee and cannot vote on decisions at meetings.

G. Meetings of Complaints Sub-committee

- 1) The Complaints Sub-committee will meet quarterly to determine complaints about material breaches of the Code that have been escalated to it during the previous quarter. DIGI must give written notice of a meeting of the Complaints Sub-committee to the parties of complaints that will be heard at that meeting. DIGI will give that notice to the parties at least 48 hours in advance of the meeting (or such other period as may be agreed on by the sub-committee).
- 2) The Complaints Sub-committee may, in its discretion, review DIGI's handling of complaints at any quarterly meeting.
- 3) In addition, the Complaints Sub-committee will meet at least every six months to review and report on whether there are systemic issues with all eligible complaints that have been received during the previous six-months.
- 4) Meetings will be held at such place and time as DIGI may determine.
- 5) DIGI may cancel a meeting of the Complaints Sub-committee, if no complaints have been received during the relevant period. Additional meetings of the Complaints Sub-committee may be convened by DIGI, depending on the volume and types of complaints received.
- 6) Two independent members of the Complaints Sub-committee constitute a quorum for the transaction of the business of a meeting.
- 7) Each member present at a meeting of the Complaints Sub-committee is entitled to one vote.

H. Powers of Complaints Sub-committee

Complaints Sub-committee's approach to decision-making

- 1) The objective of the members of the Complaints Sub-committee is to achieve agreement concerning the matters before them through a consensus decision which, if achieved, will be recorded as such.
- 2) The Complaints Sub-committee may seek the advice of one or more independent experts to advise it in relation to eligible complaints that are under its consideration, where the members require specialist knowledge about the operation of a Signatory's technology, or where the complaint raises concerns that relate to the protection of citizens' health, or the protection of marginalised or vulnerable groups.
- 3) The Complaints Sub-committee will follow a fair, consistent and transparent process for dealing with complaints about material breaches of the Code that gives both sides to a complaint an adequate opportunity to be heard. In general, the Complaints Sub-committee will only accept written arguments and evidence from the parties to a complaint, but may in its discretion request meetings with the Signatory and the complainant.

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- 4) The Complaints Sub-committee can, at any time, tell the relevant Signatory or a complainant to send them any information or documents they have that are relevant to the complaint.
- 5) If the Complaints Sub-committee requests the Signatory or the complainant to provide information or documents, they will explain how long the Signatory or the complainant has to provide the information and documents. The Complaints Sub-committee will be reasonable in setting this deadline but it will not be more than thirty days.
- 6) If a Signatory or complainant has information or documents that are relevant to the complaint but which contain confidential information, the Complaints Sub-committee will still want to see the information and documents, but will not disclose that information to anyone else. A Signatory may decline to provide confidential information, or agree to provide it subject to the Complaints Sub-committee agreeing to enter into a confidentiality agreement.
- 7) If a Signatory fails to provide information or documentation requested by the Complaints Sub-committee within thirty days, the Sub-committee may make a decision about the complaint in the absence of that information.
- 8) The Complaints Sub-committee will make their assessment of systemic issues based on the aggregated data about eligible complaints provided by DIGI in section D, sub-section 21. Where, based on such assessment, the Complaints Sub-committee determines there may be a systemic issue concerning a Signatory, they may also access additional information about other eligible complaints that is held by DIGI which is relevant to their assessment.
- 9) If the Complaints Sub-committee determines there is a potential systemic issue concerning a Signatory, they will notify the Signatory who will have an opportunity to review the relevant data and provide a written response to the Complaints Sub-committee's assessment. The Complaints Sub-committee will also discuss with Signatories who may have systemic issues the Complaints Sub-committee's recommendations for remedial action before these are finalised.
- 10) The Complaints Sub-committee may access data and information from DIGI concerning handling of complaints, to assess whether DIGI's approach is consistent, fair and meets these Terms of Reference.
- 11) If the Complaints Sub-committee assesses that DIGI's approach to complaints handling is unsatisfactory, it will notify DIGI who will have an opportunity to review the relevant data and provide a written response to that assessment. The Sub-committee will also discuss any proposed recommendations for remedial action regarding DIGI's complaints handling with DIGI before these are finalised.

Complaints Sub-committee's actions in relation to material breaches of the Code

12) The Complaints Sub-committee can decide the resolution of a complaint about a potential material breaches of the Code based on the severity of the breach as outlined below:

- i) **If not serious → direct discussion.** For a non-serious breach, such as a failure to publish a policy for a short period of time due to a technical issue, the Complaints Sub-committee will discuss the issue with the Signatory, with the aim of managing the risks of a repeat breach.
- ii) **If more serious → a public statement explaining the issue and steps agreed:** If the Complaints Sub-committee determines a Signatory may have violated one or more mandatory commitments under the Code and the matter is serious enough to require corrective action and informing the public, the Complaints Sub-committee will discuss the issue with the Signatory and may issue a statement to be published on the DIGI website explaining its stance and steps agreed to resolve the issue. This would also be noted in DIGI's annual report on code administration. The relevant Signatory may also issue a public response on the matter, either on the DIGI website or via any other means it chooses.
- iii) **If it appears more serious and would take time to resolve → an allowance period for that resolution to occur.** If the Complaints Sub-committee determines a Signatory may have seriously breached the Code and is willing to take corrective action but needs more time to do so, the Complaints Sub-committee may allow the Signatory reasonable time for this to take place. The time allowed will be limited to a maximum of three months.
- iv) **If it appears more serious but needs investigation → an allowance period for that investigation to occur.** If the Complaints Sub-committee determines that the Signatory may have seriously breached the Code but cannot agree a response with the Signatory, they may allow a period of time to conduct that investigation before deciding on action. The time allowed for investigation and resolution will be limited to a maximum of six months.
- v) **If the Complaints Sub-committee determines the issue is serious, and the Signatory refuses to take remedial action or cooperate in an investigation or correction not possible → withdrawal of signatory status.** If the Complaints Sub-committee determines a Signatory has made a very serious breach of the Code, and the Complaints Sub-committee and Signatory cannot agree on how to resolve the matter within a reasonable time frame, the Complaints Sub-committee may withdraw signatory status. The Complaints Sub-committee will only

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withdraw signatory status where the Signatory has failed to file a transparency report within six months of the due date set by DIGI, or the issue is so serious that it substantially compromises the ability of the Signatory to meet its commitments in relation to Outcome 1 of the Code (sections 5.8, 5.10, 5.11 and 5.13 of the Code).

For example, *if the Signatory has, without reasonable excuse, failed to provide a mechanism to the public to make reports of breaches of its policies for an extended period.*

For example, *if the Signatory has repeatedly sought to deliberately conceal or misrepresent material information about the measures it is taking under the Code in its annual transparency report and refuses to make a correction.*

Next steps after resolution of a material breach of the Code

- 13) DIGI must advise the complainant promptly of the Complaints Sub-committee's decision.
- 14) The complainant must tell DIGI if they accept the decision within thirty days of receiving notice of the outcome from DIGI. If the complainant does not respond within thirty days, DIGI will consider the matter resolved, unless there are reasonably extenuating circumstances. If the complainant does not accept the Complaints Sub-committee's decision, the Signatory does not need to comply with the decision and DIGI will consider the matter resolved.

Complaints Sub-committee's actions in relation to systemic issues

- 15) The Complaints Sub-committee will meet every six months to review the aggregated data provided by DIGI concerning eligible complaints under section D sub-section 21 above.
- 16) The Complaints Sub-committee will assess the data for possible systemic issues and advise relevant Signatories and the Administration Sub-committee of their assessment which must be included in DIGI's annual report on Code administration.
- 17) The Complaints Sub-committee may make recommendations to Signatories about how they should respond to systemic issues.
- 18) Signatories will reasonably consider and provide a written response to the Complaints Sub-committee's assessment and/or recommendations concerning systemic issues. Signatories, who may have a systemic issue will, in their reasonable discretion, decide whether they accept or act upon the Sub-committee's recommendations. With the permission of those Signatories, the Complaints Sub-committee may communicate any recommendations for remedial action and Signatories' responses to impacted complainants.

Complaints Sub-committee's actions in relation to DIGI's handling of complaints

- 19) The Complaints Sub-committee may review data and information about DIGI's handling of complaints at any quarterly meeting concerning material breaches of the Code.
- 20) The Complaints Sub-committee will assess whether DIGI's handling of complaints is consistent, fair and meets these Terms of Reference.
- 21) The Complaints Sub-committee may make recommendations to DIGI and the Administration Sub-committee about remedial actions DIGI should take to improve its approach to complaints handling. DIGI will reasonably consider and will respond to the Complaints Sub-committee's assessment or recommendations. DIGI, in its reasonable discretion, will decide whether to accept or act upon the Sub-committee's recommendations.
- 22) DIGI must include the Complaints Sub-committee's assessment of its complaints handling, together with its recommendations and DIGI's response in its annual report on code administration.

Reasons for decision and recommendations

- 23) DIGI's annual report on Code administration will be published on DIGI's website and will contain information about:
 - a) the volume of eligible and ineligible complaints;
 - b) the volume of complaints about material breaches and other types of complaints;
 - c) the Complaints Sub-committee's decisions about complaints of material breaches;
 - d) the Complaints Sub-committee's assessment of, and any recommendations about potential systemic issues;
 - e) the Complaints Sub-committee's assessment of DIGI's approach to complaints handling during the previous twelve months; and
 - f) the responses of Signatories and DIGI to any of the items in a) to d) above.
- 24) The information that DIGI may publish about complaints about material breaches may include details of the complaint, the name of the Signatory and the reasons why the Complaints Sub-committee reached the decision or dismissed the complaint.

Termination of complaints

- 25) DIGI or the Complaints Sub-committee may stop handling a complaint at any time if it is fair and reasonable to do so, including:
 - a) When the complainant engages in unreasonable conduct in their dealings with DIGI, as such conduct can significantly affect our operations.

- b) We have asked the complainant to provide documents or evidence that we think may be relevant to their complaint by a stated time, and the complainant has not done so;
- c) Another person or body is able to handle the complaint more effectively or conveniently than we can. If this happens, we will write to the the complainant and the Signatory to tell them who will recommend should handle the complaint;
- d) The complainant is not making the complaint in good faith; or
- e) We believe that the Signatory has made a fair offer to resolve the complaint and the complainant has not accepted the offer.

I. Changing these Terms of Reference

- 1) Signatories and members of the Complaints Sub-committee can suggest a change to these Terms of Reference to DIGI at any time subject to the requirements of the Code. DIGI can also make its own suggestion for a change to these Terms of Reference at any time.
- 2) Signatories will decide whether to make the suggested change to the Terms of Reference.

J. Privacy

- 1) DIGI and the Complaints Sub-committee will comply with privacy legislation and the DIGI Privacy Policy.
- 2) With the permission of relevant Signatories, DIGI may share information with regulators including the ACMA, government bodies and community and industry groups.

For example, DIGI may share information:

- i) for the purposes of increasing legal compliance or promoting good practice.*
- ii) for the purposes of suggesting improvements to the Code.*
- iii) to provide an independent voice about disinformation and misinformation issues and policy.*