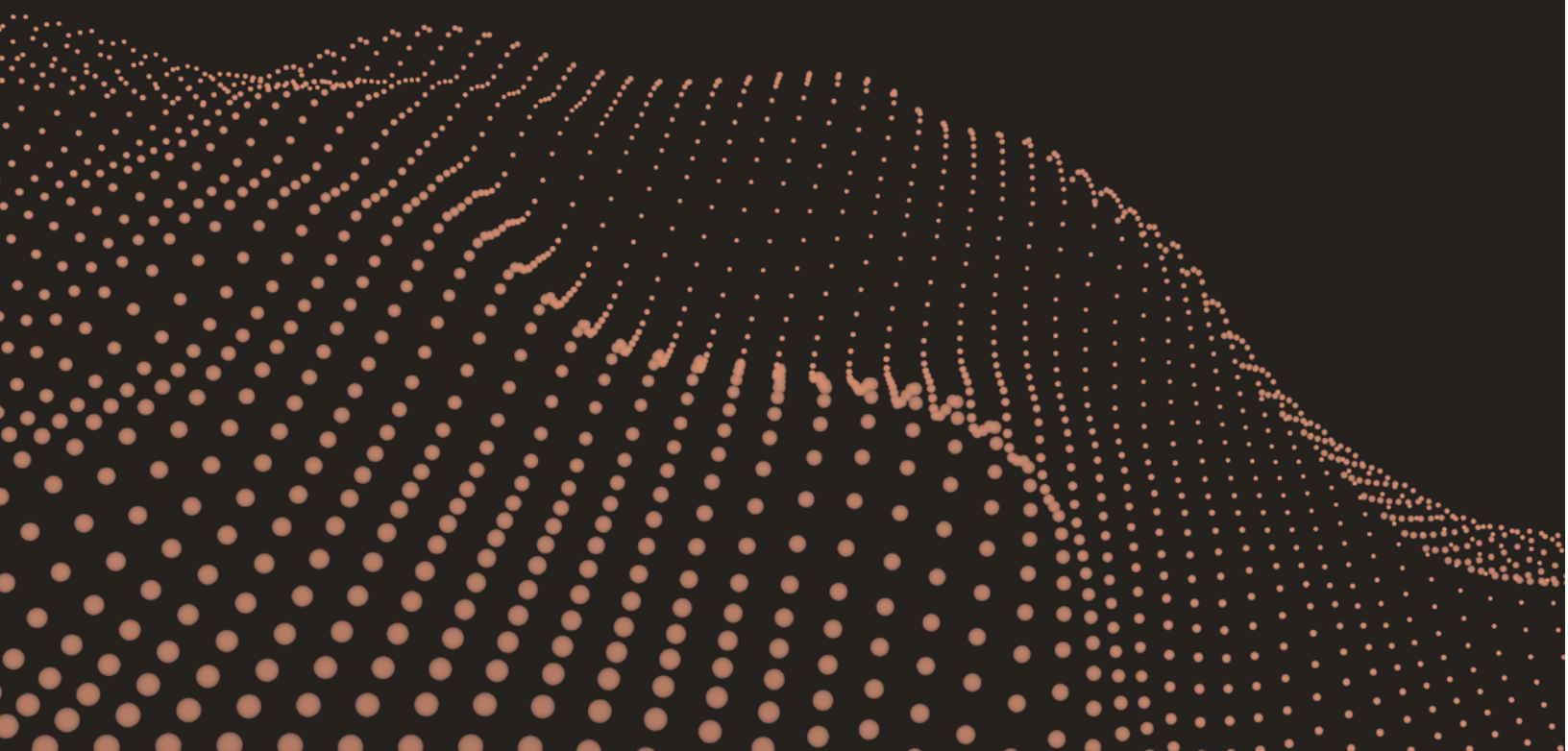




2022 Review of The Australian Code of Practice on Disinformation and Misinformation:

Response to submissions

Published December 22, 2022



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This is a report prepared by the Digital Industry Group Inc (DIGI) in relation to the response to submissions received during the public consultation on the 2022 Review of *The Australian Code of Practice on Disinformation and Misinformation*.

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Background

The *Australian Code of Practice on Disinformation and Misinformation* ('the ACPDM' or 'the Code') has been developed by the Digital Industry Group Inc. (DIGI), and adopted by Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok and Twitter¹ (the Signatories).

The ACPDM was launched in February 2021 in response to government policy as set out in *Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry*². The development of the ACPDM was informed by expert guidance provided by the University of Technology Sydney, Centre for Media Transition, and First Draft, a global organisation that specialises in helping societies overcome false and misleading information. It was also informed by stakeholder input from public consultation, in line with guidance provided by the Australian Communications and Media Authority (the ACMA) set out in *Misinformation and News Quality on Digital Platforms in Australia: A Position Paper to Guide Code Development*³ ('ACMA Position Paper').

On June 6, 2022, the Signatories commenced a review of the ACPDM, as required by section 7.8 of the Code, accompanied by a DIGI Discussion Paper to assist public consultation that provided background and specific eight specific questions and proposals for consideration⁴. The paper took into account the ACMA June 2021 *Report to government on the adequacy of digital platforms disinformation and news quality measures*⁵ (ACMA Report to Government).

Consultation questions posed in the Discussion Paper

- 1) Should the ACPDM cover a broader scope of Signatories? If so should:
 - a) the ACMA have a continued role in identifying those services that are within the scope of the Code; and
 - b) what should the criteria be for a company's eligibility to participate in the Code?
- 2) Should the ACPDM take an opt-out rather than an opt-in approach to the optional commitments under the Code?⁶
- 3) Should the definition of harm be amended to deal with concerns about the narrowness of 'serious and imminent threat' language?⁷
- 4) Should the exemption for professional news content be revised so that it is clearer? Should the Code be extended to cover news aggregation services?⁸

¹ DIGI (2021), *Australian Code of Practice on Disinformation and Misinformation*, <https://digi.org.au/disinformation-code/> (ACPDM)

² The Treasury (12/12/19), *Regulating in the digital age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry*, <https://treasury.gov.au/sites/default/files/2019-12/Government-Response-p2019-41708.pdf>

³ ACMA (26/06/21), *Misinformation and News Quality on Digital Platforms in Australia: A Position Paper to Guide Code Development*, <https://www.acma.gov.au/sites/default/files/2020-06/Misinformation%20and%20news%20quality%20position%20paper.pdf> (ACMA Position Paper).

⁴ DIGI, ACPDM, 2022 Review of Australian Code of Practice on Disinformation and Misinformation, Discussion Paper, June 6 2022

⁵ ACMA (21/03/2022), *Report to government on the adequacy of digital platforms' disinformation and news quality measures*, <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures> (ACMA Report to Government).

⁶ ACMA Report to Government, findings 22 and 39, p. 87.

⁷ ACMA Report to Government, finding 24, p. 87.

⁸ ACMA Report to Government, finding 26, p. 87.

- 5) Should the Code be extended to include private messaging services?⁹
- 6) Should the approach of the Code to issues-based advertising be clarified?¹⁰
- 7) Should the Code better define paid and sponsored content?¹¹
- 8) Is the Code meeting the needs of industry and the community to balance concerns about misinformation and disinformation with the need to protect freedom of expression online?

It should be noted that the release of the DIGI Discussion Paper for the 2022 review of the ACPDM pre-dated the EU Strengthened Code of Practice on Disinformation (EU Strengthened Code), released on June 16, 2022¹². Some submissions contained feedback that referenced developments concerning the EU Strengthened Code.

The proposals and questions outlined in the DIGI Discussion Paper were open for a six week period of public consultation which concluded on July 18, 2022. DIGI received 13 submissions from the stakeholders listed below:

1. Australian Academy of Science (AAS) and the Australian Academy of Technological Sciences & Engineering (ATSE) (joint submission)
2. Alannah & Madeleine Foundation (AMF)
3. Australian Broadcasting Corporation (ABC)
4. Australian Communications and Media Authority (ACMA)
5. Australian Communications Consumer Action Network (ACCAN)
6. Australian Electoral Commission (AEC)
7. Australian Muslim Advocacy Network (AMAN)
8. Breastfeeding Advocacy
9. Centre for Responsible Technology (CRT)
10. Croakey Health Media (CHM)
11. Jonelle Norman
12. Journalism Education & Research Association of Australia (JERAA)
13. University of Technology Sydney, Centre for Media Transition (CMT)

These submissions have been published on the DIGI website, together with this document and the revised ACPDM. DIGI engaged key stakeholders during the consultation period through a roundtable which explained the review process to key stakeholders and presented research commissioned by DIGI and conducted by Resolve Strategic into Australians' perceptions of misinformation. This nationally representative survey research was published in DIGI's Annual Report on the ACPDM (Annual Report)¹³. The Annual Report also contains information about how the Code has evolved since it was initially launched, detailing its governance arrangements, complaints and evolutions in the transparency reporting process.

In this document, DIGI outlines how the Signatories have responded to the feedback provided on the 2022 review of the ACPDM, including feedback concerning the developments in the EU.

⁹ ACMA Report to Government, finding 27, p. 87

¹⁰ ACMA Report to Government, finding 28, p. 87

¹¹ ACMA Report to Government, finding 27, p. 87

¹² EU Strengthened Code of Practice on Disinformation

<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

¹³ See DIGI, Australian Code of Practice on Disinformation and Misinformation Annual Report <https://digi.org.au/disinformation-code/code-review/>

A. Discussion of DIGI's questions and stakeholders' responses

Question 1: Should the Code cover a broader scope of Signatories?

As explained in the DIGI Discussion Paper, the scope of the ACPDM currently covers major digital platforms in Australia, including platforms that are not existing DIGI members, and platforms that are not Signatories to the European Union (EU) Code of Practice on Disinformation¹⁴. These platforms meet the ACMA's recommended threshold for participation in the Code of one million active monthly users in Australia.

The ACMA suggested it would be desirable for the Code to be extended to other digital services if they do not meet the proposed threshold of one million active monthly users¹⁵. Several submissions were supportive of extending the Code to a broader range of Signatories. For example, CMT suggested that the Code could cover a broader scope of Signatories, including smaller platforms, and a broader range of services. In addition, there was support for the ACMA having a continued role in encouraging wider participation in the Code. For example, the ABC submitted that the 'ACMA should continue to have a role in identifying those services that are strong candidates for being within the scope of the Code. This includes providing further advice on whether the indicative eligibility criteria for participation should be adjusted to broaden participation (e.g. 500k active users per month) and/or establishing a set of other qualitative factors that could guide participation'. JERAA was also of the view that the ACMA should play a continuing role in identifying those services that are within the scope of the ACPDM.

While Signatories cannot enforce participation in the Code, they welcome the ACMA playing the role suggested by the ABC and JERAA.

DIGI's inquiries indicated that greater participation in the ACPDM could be encouraged by adjusting the requirements for transparency reporting for smaller digital platform Signatories that provide services with a user base of less than one million active monthly users in Australia. The ACMA also noted that that the Code's reporting obligations are seen as onerous and a key disincentive to participation and that DIGI may wish to consider whether a graduated or tiered reporting framework for Signatories of different sizes could be considered as part of the ongoing evolution of the Code. With this aim, section 7.4 of the Code has been updated to provide that these smaller digital platforms must provide an initial report to DIGI setting out progress towards achieving the outcomes contained in the Code which will be published on the DIGI website. This report will be updated annually by smaller digital platforms only if there are any material changes to the report, such as the addition of new products and services subject to commitments under the Code.

Question 2: Should the Code take an opt-out rather than an opt-in approach to the optional commitments under the code?

The ACMA has recommended that the ACPDM should be strengthened by taking an opt-out approach. Under such a framework, platforms would be permitted to opt out of an outcome only where that outcome is not relevant to their services.¹⁶ As outlined in the DIGI Discussion Paper, this approach was designed to accommodate digital platforms that 'operate vastly different businesses which offer a wide

¹⁴ DIGI, ACPDM, 2022 Review of Australian Code of Practice on Disinformation and Misinformation, Discussion Paper, June 6 2022

¹⁵ ACMA Report to Government, findings 18, p. 86.

¹⁶ ACMA Report to Government, finding 22, p.87.

and constantly evolving variety of services and products¹⁷ and 'the need of the Signatories to choose those measures which are most suitable to address instances of disinformation and misinformation' on their services¹⁸. This is broadly consistent with the EU Strengthened Code which enables its Signatories to decide which commitments they sign up to, based on the relevance and pertinence of the commitments to their products and services. Additionally, we received feedback from Signatories about the importance of being adaptive and responsive to changes in the information environment, reinforcing the need to ensure that the approach of the Code remains flexible and not overly prescriptive. The DIGI Discussion Paper contained draft improvements to the opt-in model that would require Signatories to:

- 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.
- List in their annual transparency reports, the products and services that are subject to the Code including any additional products and services that have been assessed to be subject to the Code during the period covered by the report¹⁹.

DIGI received a variety of responses in submissions regarding the proposed approach to strengthening the opt-in model outlined in the Discussion paper. Several submissions recommended that the ACPDM should follow an opt-out approach. For example, the AEC submitted that an 'opt-out approach to the optional commitments would encourage a more consistent industry-wide standard for the countering of harmful mis- and disinformation'. JERAA expressed the opinion that commitments to the optional sections within the Code should be opt out rather than opt in: 'If a platform chooses to opt out of any section of the ACPDM, it must establish a reason why that section is not relevant to its service and whether alternative actions or strategies may be employed'. The ABC was supportive of the proposed changes to strengthen the opt-in approach, noting however that it depends on Signatories providing a sufficient explanation for their commitments. Over time, the ABC submitted that it would be beneficial for the ACPDM to 'move to an opt out model to place greater onus on Signatories to justify why a specific requirement is not relevant to their service and to ensure they provide clear justification for the decision'. Similarly UTS CMT submitted that there is not necessarily a need to shift from opt-in to opt-out, but platforms that become Signatories should explain their decisions not to opt in to one or more of the commitments.

Taking into account Signatories' views that, from a practical perspective, an opt-in approach is key to ensuring the ACPDM is able to accommodate the diverse and growing range of services they provide to the Australian market, the Code has been amended as proposed in the Discussion Paper to strengthen transparency around the products, services that are within scope of the Code and the specific commitments made by Signatories. In addition, consistent with feedback from some Signatories about the need for clear information on the DIGI website (see submissions from ACANN, ACMA) about the application of the ACPDM to different Signatories, DIGI has included a new chart on its website that explains which commitments have been adopted by each signatory to further increase public transparency.

Section 7.1 of the ACPDM has been amended by adding the following additional requirements:

Each signatory 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

¹⁷ ACPDM, Section 1.5.

¹⁸ ACPDM, Section 5.19, 5.20.

¹⁹ DIGI, ACPDM, 2022 Review of Australian Code of Practice on Disinformation and Misinformation, Discussion Paper, June 6 2022 p. 8.

the code) and update and notify DIGI of any updates to the opt-in form. DIGI will publish updates on the DIGI website.

Section 7.3 has been updated to provide:

Each signatory's transparency reports will list the product and services covered by the code including additional products and services that have been assessed to be subject to the code during the period covered by the report.

Question 3: Should the definition of harm be amended to deal with concerns about the narrowness of 'serious and imminent threat' language?

The ACPDM definitions of 'Disinformation' and 'Misinformation', are linked to a threshold of 'Harm' that was developed to ensure that Signatories are not incentivised to remove material contrary to the human right to free expression which is a fundamental democratic principle enshrined in the Code. As originally drafted, section 3.4 defined harm as follows:

Harm means harms which pose an imminent and serious threat to:

A. democratic political and policymaking processes such as voter fraud, voter interference, voting misinformation; or

B. public goods such as the protection of citizens' health, protection of marginalised or vulnerable groups, public safety and security or the environment.

The DIGI Discussion Paper explained that this approach was in line with the Digital Platforms Inquiry conducted by the ACCC which recommended a high threshold of 'serious public detriment' as a criterion for platforms to take action against disinformation.²⁰ Initially, Signatories settled on the inclusion of the 'imminent' and 'serious' standard of harm in the Code definitions, as it provided an objective criterion relating to misinformation and disinformation that they considered appropriate for a regulatory instrument.

The public consultation on the draft revisions to the Code in 2020 reinforced the diversity of views on the meaning of 'disinformation' and 'misinformation'. In its *Report to Government*, the ACMA agreed that a threshold of 'serious' harm in the ACPDM was appropriate, but considered the requirement that harm be 'imminent' could also exclude a range of chronic harms that can result from the cumulative effect of misinformation over time²¹. DIGI noted in the Discussion Paper that it is extremely difficult for platforms to foresee when an accumulation of instances of misinformation on a given topic is likely to result in harm that may be years or decades away. However, it is important to note that the Code's original approach did not preclude action in situations where harms of a chronic nature reach a tipping point that create an imminent threat. For example, Signatories have detailed their responses to vaccine misinformation in the context of the Covid 19 pandemic in their transparency reports.

The submissions to the 2022 review contained a range of views on the threshold for harm under the Code. The AEC suggested that the definition of harm be updated to include cumulative harms, such as

²⁰ACCC (2019), *Digital Platforms Inquiry Final Report*.

<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>, p. 370

²¹ ACMA *Report to Government*, p. 52,53, finding 24, p. 57.

cumulative harms to democratic institutions. DIGI notes that the existing definition of harm includes democratic processes, we consider that the ACPDM positively contributed to the AEC's assessment in August 2022 that the Australian federal election saw much lower levels of electoral misinformation and disinformation this election than in other like minded democratic elections across the globe²².

The ABC was concerned to include within the definitions of mis- and disinformation 'information that erodes trust in public institutions, and professional sources of information' or 'presents threats to community cohesion'. While we understand the concerns, these types of harms are very difficult to objectively quantify and predict

In its submission, UTS CMT suggested that consideration could be given to both removing the reference to 'imminent' in the definition of harm and lowering the threshold to 'potentially harmful', similar to the EU Strengthened Code. DIGI considers that the low and indeterminate threshold of 'potentially harmful' is inappropriate in the Australian context; this is because, unlike the ACPDM, the *EU Strengthened Code* is situated within a very strong human rights framework, in which citizens have embedded and enforceable rights of freedom of expression that override the EU Strengthened Code²³.

Some other submissions, including from AMAN, suggested expanding harms to cover instances of hate speech that for example dehumanise a marginalised group. We wish to highlight that the existing definition of harm covers the protection of marginalised and vulnerable groups. While acknowledging the validity of the broader concern about hate speech online, we consider that, in Australia, this issue is better addressed by changes to anti-discrimination laws of general application, rather than the Code focused on misinformation and disinformation only. On this issue, DIGI has advocated for anti-discrimination laws to be updated in order to prohibit hate speech related to characteristics including (but not limited to) sexuality, gender identity, disability, and national origin. A clearer legislative framework will serve to help relevant stakeholders, including all digital platforms, to better report, review and remove content that meets a defined Australian legal threshold.

In addition to stakeholder feedback on the definition of harm, DIGI also considered the Resolve Strategic research it commissioned into Australian's perceptions of misinformation that underscores the lack of objective determinations of claims that online material is 'misinformation, nor a shared perception that it necessarily 'harmful'.

Taking into account these inputs, DIGI sought to respond to concerns about the threshold of harm while also ensuring that definitions of misinformation and disinformation in the ACPDM remain framed in terms that are reasonably clear to Signatories and the public. Therefore, we have amended the definition of harm in section 3.4 by replacing the word 'imminent' with 'credible'. In this context, a credible threat would be one that Signatories can be confident will materialise based on evidence and previous experience. A clarifying note has also been added to the Code as included below.

The definition of Harm in section 3.4 of ACPDM has been updated:

Harm means harms which pose a credible and serious threat to:

- A. democratic political and policymaking processes such as voter fraud, voter interference, voting misinformation; or
- B. public goods such as the protection of citizens' health, protection of marginalised or vulnerable groups, public safety and security or the environment.

²² Australian Electoral Commission, Press Release [03/08/2022], *AEC celebrates successful disinformation partnerships*, <https://www.aec.gov.au/media/2022/08-03.htm#:~:text=With%20the%202022%20federal%20election,promote%20electoral%20integrity%20in%20Australia>.

²³ See *EU Strengthened Code of Practice on Disinformation*, Preamble I q).

Note: Harm which poses a credible and serious threat excludes harm that cannot be reasonably foreseen.

Question 4: Should the exemption for professional news content be revised so that it is clearer? Should the Code be extended to cover news aggregation services?

The exemption of professional news from misinformation obligations

Section 4.4 of the ACPDM exempts news content that is the subject of a published editorial code and/or complaints mechanism from being treated as *misinformation*. Furthermore, in the DIGI Discussion Paper we clarified that professional news does fall within the scope of the ACPDM, where it is being disseminated via inauthentic behaviours to mislead online users as part of a *disinformation* campaign.

While DIGI recognises that there can be misinformation or false reporting in traditional news media, the ACPDM has been developed for and on behalf of digital platforms. There are a range of separate self and co-regulatory codes governing the news industry which could be updated to provide an appropriate outlet for addressing misinformation.

In our view, digital platforms that distribute professional news should generally be able to rely on the news provider to ensure the accuracy and editorial integrity of news content. However, we agree that the ACPDM should clarify how it treats news content. With this aim, the DIGI Discussion Paper outlined a proposal for defining 'professional news' and 'news source' in the ACPDM based on the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*. Submissions contained a number of views about the proposed clarifications to the treatment of news content. UTS CMT objected to the scope of the proposed criteria for 'professional news sources', and argued that only news sources subject to external standards and complaints schemes should be treated as professional and therefore exempt from the ACPDM's misinformation obligations. However, using the CMT threshold would mean that the Code's misinformation exemption would not extend to many quality news outlets including those from the United States news as as the US, unlike Australia does not have external self regulatory Press Councils that provide external standards and complaints schemes. JERAA suggested that the misinformation exemption for professional news content should be modified to specify that it refers to news and other journalistic content from media organisations or other news content creators that adhere to a published editorial code, which sets out content standards and a complaints mechanism. Again, many reputable US news outlets do not provide a mechanism for complaints about their editorial standards, although they may provide a means for readers to submit corrections. The ABC considered that the ACPDM should protect 'the editorial independence of credible news organisations who can be identified by their charter, governing rules, editorial policies and complaints handling'. The ABC supported a misinformation exemption in the ACPDM for professional news that are subject to robust editorial policies and clear complaints handling processes, noting that professional news content is already covered by separate processes oversight and regulatory frameworks that promote accuracy and impartiality. In contrast, AMAN queried whether news content should be exempted from the misinformation commitments in the Code at all, noting that media regulation in Australia does not include online content and that media regulatory codes do not address misinformation or disinformation. Similarly the Australian Academy of Science (AAS) and the Australian Academy of Technological Sciences & Engineering (ATSE) considered that news content should not be exempted from being within the scope of misinformation.

We note that the issue of regulation of news media online is being reviewed by the ACMA. In June 2022 the ACMA released a discussion paper, *What audiences want – Audience expectations for content safeguards: A position paper for content providers* which foreshadows a broad examination of whether existing regulatory settings provide appropriate community safeguards for professional content, including online news content²⁴. The paper outlined some suggested best practice approaches to ensure that the standard of news content was in line with audiences expectations as to news quality, including that all 'content providers should prevent the amplification or spread of misinformation and disinformation'. The ACMA discussion paper noted the importance of editorial independence as a key audience expectation of Australian audiences around news content.

In this context, we remain of the view that the exemption for professional news content from being treated as 'misinformation' under the Code should remain, and that the news media itself is best placed to address concerns about misinformation in news content within the framework of self regulatory and regulatory codes and practice specifically designed by and for that industry. Amendments to Section 4.1 make clear that the Code is open to organisations that distribute digital news content. We have also included new definitions of 'Professional news content' and 'News source' (included below) that make clear that news sources must have editorial independence from the subjects of news coverage to qualify for the section 4.4 exemption for professional news sources.

A new section 3.10 of the ACPDM has been added to define professional news exempted from the definition of misinformation in section 4.4:

Professional news is online material produced by a news source that reports, investigates or provides critical analysis of:

- a) issues or events that are relevant in engaging end-users in public debate and in informing democratic decision-making; or
- b) current issues or events of public significance to end-users at a local, regional or national level.

A new section 3.7 has been added to set out criteria for news sources:

A news source is a journalistic producer of news that has editorial independence from the subjects of its news coverage and is:

- a) subject to the rules of the Australian Press Council Standards of Practice or the Independent Media Council Code of Conduct; or
- b) subject to the rules of the Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice; or
- c) subject to the rules of a code of practice or other regulatory instrument that specifies standards of editorial practice in another country; or
- d) is subject to internal editorial standards that relate to the provision of quality journalism; or
- e) provides a publicly accessible mechanism for making requests for corrections or complaints about the quality of its news coverage.

²⁴ Australian Communications and Media Authority, *What audiences want – Audience expectations for content safeguards: A position paper for professional content providers June 2022*
<https://www.acma.gov.au/publications/2022-06/report/what-audiences-want-audience-expectations-content-safeguards>

Treatment of news aggregation services under the ACPDM

The DIGI Discussion Paper explained that the scope of the ACPDM is intended to cover news aggregation services on larger platforms where there is a risk that inauthentic behaviour can manipulate the priority of news stories by, for example, drowning out a trending story by pushing competing content. The *DIGI Discussion Paper* proposed that the Code be amended to make clear that news aggregation services are in scope. Submissions generally supported the proposed change, which has been incorporated in section 4.1 of the ACPDM (see p. 14 of this report for the wording).

Question 5: Should the code be extended to include private messaging?

In the DIGI Discussion Paper we proposed that it was not appropriate in the Australian context to extend the commitments directed under the Code to capture private communications on messaging services.

Some submissions argued that private messaging should be within scope of the ACPDM. The AEC endorsed the ACMA's proposal to amend the Code to introduce a category of public or 'semi-public' messaging. UTS CMT points to the commitments made by Signatories to the EU Strengthened Code to address the dissemination of mis- and disinformation on private messaging services that include implementing features to facilitate users' access to authoritative information, to help users identify disinformation, and to limit viral propagation on their services (such as by increasing friction). ACCAN provides an alternative view that there is not yet enough information about the prevalence of misinformation on private messaging services in Australia or mechanisms that could limit the spread of mis- and disinformation while paying due regard for the protection of user's privacy. They suggest that 'if in future, private messaging services are included in the Code, measures to introduce 'friction' should be subject to significant scrutiny and reporting. Proposals for these measures should also be developed in close consultation with civil society to limit the risk of scope creep or censorship'.

The EU Strengthened Code, as noted above, has been developed in a different legal context to the ACPDM which features a strong human rights framework including enforceable right to freedom of speech and privacy. In particular, the EU has a strong position against content monitoring from services that 'merely give access to, transmit, or store' content²⁵. The Council of Europe, Recommendation CM/Rec (2018)2: 1.3.5 further provides that 'state authorities should not directly or indirectly impose a general obligation on intermediaries to monitor content which they merely give access to, or which they transmit or store, be it by automated means or not. When addressing any request to internet intermediaries or promoting, alone or with other states or international organisations, co-regulatory approaches by internet intermediaries, state authorities should avoid any action that may lead to general content monitoring'²⁶. In the absence of these kinds of legal protections and specific evidence about the prevalence of misinformation or disinformation on private messaging services, we remain of the view that private messaging should be exempted from the ACPDM.

Having said that, it remains open for companies to introduce measures such as contemplated by the EU Strengthened Code for the Australian market if deemed appropriate. For the second set of transparency reports, DIGI commissioned an independent expert to develop Best Practice Reporting Guidelines to drive improvements in Signatories' annual transparency reporting. These have been incorporated in Appendix 2 of the revised ACPDM. Going forward DIGI will work with the independent expert to consider whether

²⁵ Article 15(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

²⁶ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018).

Signatories should report in their annual transparency reports on steps they take to deal with mis and disinformation beyond the ACPDM's minimum requirements. (See section C below).

Question 6: Should the approach to issues-based advertising be clarified?

The ACPDM, as originally drafted, provided that issues-based advertising that 'advocates for the outcome of a political campaign concerning a social issue of public concern in Australia' was treated as a form of political advertising. This meant that certain issues-based advertising was excluded from the definition of misinformation, but was subject to the optional commitments in Objective 5 of the ACPDM requiring Signatories to be transparent about the source of political advertising. The intention of this approach was to promote transparency around paid for issues based advertising that promotes an outcome of a political campaign, such as the marriage equality campaign in 2018 i.e. political campaigns that are part of a process overseen by a State or Federal body such as an electoral management body. It was not intended to cover issues-based advertising that is for general advocacy purposes, not associated with a clear proposal by a parliament for policy change via a democratic process such as via an election, referendum, or postal vote. This was designed to ensure the Code protected freedom of political communication and electoral integrity. However, several stakeholders such as CMT, the ACMA, ACCAN, asked that the approach to issues-based advertising be clarified in the revised Code.

The EU Strengthened Code of Practice is yet to resolve the question of how issues based advertising should be defined and dealt with by Signatories. According to the ACMA, issues-based advertising includes sponsored and paid-for content that is intended to bring awareness to, advocate for, or call for action on certain topics that are widely discussed in the public sphere, such as political and social issues.²⁷ This definition would capture advertising by interest groups that are established primarily for the purpose of advocating on issues such as health, climate change, gender inequality, racism and animal rights. It would also capture an influencer on social media, advocating for action on these topics. Additionally, the definition would encompass many mainstream advertising campaigns by household brands that seek to demonstrate their commitment to certain values by aligning themselves with the same types of issues. Recognising the difficulty of devising a clear definition, we have added a new section 5.25 to the ACPDM which provides that platforms may deal with transparency of other forms of political advertising, such as issues based advertising. In addition, we have removed the inclusion of issues-based advertising in the definition of political advertising, and have clarified the scope of the term 'political advertising' as set out below.

A new 5.25 has been added to make clear some Signatories may choose to define and implement policies on issues-based advertising.

Signatories may also, as a matter of policy, choose not to target advertisements based on the inferred political affiliations of a user or choose to define and implement commitments concerning a broader scope of political advertising including advertising that advocates for a political outcome on social issues of public concern.

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The definition of political advertising in section 3.9 has been updated:

Political Advertising means paid for advertisements:

- A. made by, on behalf of a political party; or

²⁷ ACMA Report to Government, p. 56

- B. that advocate for the outcome of an election, referendum, or other Federal, State or Territory wide political process (such as a postal vote) supervised by an electoral management body of the Commonwealth or State and Territory.
- C. are regulated as political advertising under Australian law.

Question 7: Should the Code define sponsored content?

In the ACMA Report to Government, the ACMA suggested that the treatment of paid and sponsored content should be made clearer in the Code²⁸. In its submission, the ACMA expressed concern that the proposed definition is limited to only include sponsored content on social media services, and does not envisage extending this out to sponsored content on search engines, news aggregators, or other categories of products and services that could be included under a revised code. DIGI notes that the industry draws a distinction between 'sponsored content', which typically involves a brand's paid arrangements to promote account-holders' user-generated content on social media services (e.g. through a social media influencer) and 'paid for advertising', where the brand might directly produce the content and pay for advertising of it on a platform. The intention of the ACPDM as originally drafted was to include sponsored content within the range of Digital Content subject to the Code, and it was specifically listed as being in scope in section 4.1. In response to submissions, the Code has been updated to further clarify the original intention that both sponsored content and paid for advertising are in scope of the Code. This has been made clear in amendments to section 4.1. The definition of 'sponsored content' in section 3 has also been amended, and we have added a definition of Digital advertising.

A new definition of Digital advertising services has been added to section 3.8:

Digital advertising services means paid for digital advertising services where the placement of the advertisement is sold directly by Signatories to advertisers

A new definition of Sponsored content has been added in section 3.13

Sponsored content is a paid arrangement between a social media service and an account-holder under which the social media service promotes content posted on the service beyond the account holder's list of followers in exchange for payment but excludes paid for advertising, for example, paid advertising on search engines.

Question 8: Is the Code meeting community and industry needs to balance concerns about mis- and disinformation with freedom of expression?

A number of changes have been made to the Code in response to feedback in submissions about the need for the Code to cover a broader range of digital content and Signatories, as outlined throughout this report.

²⁸ ACMA Report to Government, p. 56, finding 28, p. 57.

B. Additional feedback from stakeholders and DIGI's response

Ensuring the Code enables a broader range of digital content/potential Signatories

A theme amongst several submissions was that the ACPDM should encompass a broader range of digital content types, products and services and Signatories. For example, the AEC supported the ACPDM being extended to cover a broader range of Signatories: 'To broaden the scope of Signatories and hence the reach of the code's mandate against mis- and disinformation, DIGI could consider permitting any content-hosting online platform to adopt the commitments outlined in the code.' UTS CMT submitted that consideration be given to 'broadening the scope to companies that provide other services within the online information ecosystem, including ad-tech companies, messaging services, and online marketplaces, as is seen in the wide range of Signatories to the EU code'. The ACMA suggested that the Code may be improved by moving towards a less prescriptive and more flexible model, under which a greater diversity of products and services could be considered in-scope: 'Removing restrictions on participation would serve to better future-proof the code and signal to the government that industry is committed to monitoring for, and responding to, mis- and disinformation, wherever it appears'. While the ACPDM was not limited to specific Signatories or content types, DIGI considered that it would be helpful to articulate the scope more clearly so as to encourage take up of the Code by new Signatories, per changes included below.

Section 4.1 regarding the scope of the ACPDM has been updated to make clear that it is not limited to user-generated content and search engine results:

Scope: Recognising that the impact and incidence of the risks posed by Disinformation or Misinformation will vary greatly, amongst the diverse range of services and products provided by Digital platforms in Australia, it is expected that the commitments under this Code will apply primarily to Digital Platforms providing services and products that disseminate Digital Content to end users in Australia where Signatories consider the risk of disseminating Disinformation and Misinformation is material and/or where Signatories consider they can make a the material contribution to reducing the impact of Harms arising from Disinformation and Misinformation. The Code may therefore be signed by a broad range of Signatories and a range of products and services, and is not limited to specific types of Digital Content. For example, products services in scope may include those that:

- A. disseminate user-generated (shared content) content; and/or
- B. disseminate content that is returned and ranked by Search Engines in response to user queries;
- C. provide technological solutions that aim to assist digital platforms and /or end-users combat Disinformation and Misinformation; and
- D. offer sponsored content or digital advertising services; and
- E. aggregate and disseminate news and other types of journalistic content from a variety of different sources.

Public information about application of the ACPDM and complaints handling

Submissions noted that public transparency about the Code's application, governance and complaints portal could be improved. As the ACMA notes in their submission: 'With the complaints facility now in operation, it is particularly important that there is certainty about signatory commitments at any point in time.' This is echoed by JERAA who state that 'the ACPDM Code must require that the administrator will provide straightforward information and uncomplicated mechanisms for the community to identify which platforms are Code Signatories, which sections of the ACPDM that those Signatories are expected to adhere to (i.e. if a signatory has opted out, which sections of the Code has it opted out of), and how to lodge complaints to the signatory platforms about disinformation/misinformation and the Code's objectives or outcomes.' JERAA also state that 'The ACPDM is talked about on the 'Disinformation Code' page, but it is imperative that the Code be above the fold and in a central position on that screen, because currently it takes a fair amount of searching and scrolling to find it (DIGI, 2022a).' The ACMA noted that DIGI had amended the Code to reflect the new governance arrangements introduced in October 2021, but that there were no references to Code amendments on DIGI's website at the time.

In response to this feedback, DIGI has improved the placement of the Code and included access to previous versions. We have also included a snapshot point in time summary chart that shows Signatories' current commitments to the Code's objectives. This chart is designed to assist consumers in identifying where there may be perceived breaches of the Code that they can advance through the complaints portal.

JERAA also noted that DIGI's website currently does not have easily accessible information about how consumers can best raise concerns with platforms and recommended that the website link to each platform's webpage that advises how members of the public can raise concerns about mis- and disinformation. Relatedly, DIGI has observed that all complaints received through its complaints portal to date have concerned content or account level concerns, rather than material breaches of the code. DIGI has therefore sought to further public understanding of how to advance content level complaints on Signatories' services through updates to our website that include information about how the public can report mis- and disinformation (or content more broadly) on each signatory's service. DIGI is also initiating social media advertising to promote the Code and its complaints function; these advertisements link to the DIGI website, therefore the website improvements will assist public understanding of platform-level reporting channels, as well as the complaints portal.

Recommender systems

Although the EU Strengthened Code was released after the 2022 review of the ACPDM commenced, Signatories gave consideration to including an equivalent commitment around recommender systems. This led to the inclusion of a new outcome 1e and commitment in section 5.14.

A new outcome 1e and commitment in section 5.14 regarding recommender systems has been added.

Outcome 1e: Users will be able to access general information about Signatories' use of recommender systems and have options relating to content suggested by recommender systems.

Signatories that provide services (other than search engines) whose primary purpose is to disseminate information to the public and which use recommender systems, commit to:

- A. make information available to end-users about how they work to prioritise information that end-users may access on these service; and
- B. provide end-users with options that relate to content suggested by recommender systems that are appropriate to the service.

Note: for example, the comments section provided under news stories published by an online newspaper would be ancillary to the main service represented by the publication of news under the editorial responsibility of the publisher and therefore not subject to this commitment.

Deterring mis and disinformation advertising

Similarly, taking into account the EU Strengthened Code, Signatories agreed to amend the ACPDM to include a clear commitment to deter advertisers from repeatedly placing digital advertisements that propagate Disinformation and Misinformation.

A new commitment has been added in section 5.15 concerning advertisers that place advertisements that promote disinformation and misinformation.

Signatories that offer digital advertising services will use commercially reasonable efforts to deter advertisers from repeatedly placing digital advertisements that consistently propagate Disinformation or Misinformation.

Improving transparency reporting

Both CMT and the ACMA identified that some Signatories go above and beyond the minimum commitments they make in the ACPDM, for example, by extending their misinformation policy to categories of content exempted under the Code such as news and political advertising. Additionally, AMF suggested that it would be beneficial for Signatories' transparency reports to explain how Signatories take human rights considerations into account, when meeting their Code commitments. DIGI will work with the independent expert to consider how this feedback can be addressed by way of amendments to the Best Practice Guidelines for the annual transparency reports (now incorporated in Appendix 2 of the Code).