

Submission from the Journalism Education & Research Association of Australia (JERAA) the review of the Australian Code of Practice on Disinformation and Misinformation

**Prepared by Angela Romano, JERAA Vice-President (Networks)
with Fiona Martin, JERAA Vice President (Research)**

The Journalism Education and Research Association of Australia Incorporated (JERAA) is the peak body of Australian journalism educators and researchers from tertiary education and industry organisations. JERAA aims to raise the standard of teaching and training in journalism in order to foster excellence and integrity in the future generation of journalism practitioners. It also supports research, with the understanding this can help communities to identify trends and issues, resolve problems, and promote or celebrate excellence in journalism and journalism education. JERAA runs annual awards and grants for journalism researchers and journalism students to recognise and encourage quality in journalism research, study and practice.

The circulation of dis- and misinformation online represents a serious threat to public trust in journalism. Its intensification has led to public uncertainty about the veracity of news sources and the integrity of the profession, leading to increased abuse and harassment of journalists, particularly women and minorities. Deliberate attempts to deceive journalists require publications increase the resources they devote to information verification at a time when they are under economic duress. This makes the control of false and misleading information of critical concern for journalists, journalism educators and journalism studies researchers.

This submission has been written on behalf of JERAA's executive by Vice President (Networks) Assoc Prof Angela Romano with Vice President (Research) Fiona Martin. We are grateful for input from JERAA's Co-Secretary, Caroline Fisher. The submission addresses five consultation questions about the Australian Code of Practice on Disinformation and Misinformation (ACPDPM or the Code) review.

1. Should the code 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?

Recommendation 1: The Australian Communications and Media Authority (ACMA) should play a continuing role in identifying those services that are within the scope of the ACPDPM.

The ACMA has extensive experience in regulating Australian media through various legislation, standards and codes of practice, with oversight of telecommunications, broadcasting, radio communications and certain types of online content. In addition to the expertise of its own staff, the ACMA can marshal and analyse a vast body of research and insights from scholars, industry, community and other stakeholders with interests in the matters addressed by the ACPDPM. While some social media regulation still lies outside its remit, the ACMA's cross platform digital media regulatory expertise is important to the evolution of workable industry codes, co-regulatory and governance regimes in the national context.

Recommendation 2. Popular services should be encouraged to become signatories even if they do not meet the threshold number of active monthly users if they are growing services that may be significant vectors for spreading disinformation and misinformation.

Adobe, Apple, Facebook, Google, Microsoft, Redbubble, TikTok and Twitter have signed up to the ACPDM, thus achieving representation of the major platforms despite variations in their business models. Other popular search engines, social media platforms and content aggregators that are being used by substantive proportions of the population or by social sectors which may be more vulnerable to disinformation should also be invited to sign up, even if they fall below ACMA's recommended threshold of one million active monthly users. As is discussed further below in response to questions 4 and 5, JERAA recommends that messaging, news aggregation and other popular platforms should be encouraged to become ACPDM signatories. This move will also address the flight of extremist and conspiracy groups to smaller alternative platforms in response to tighter moderation on large platforms, as noted by the ACMA's report on misinformation (ACMA, 2022b).

2. Should the ACPDM take an opt-out rather than an opt-in approach to the optional commitments under the code?

Recommendation 3: 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 ACPDM notes that the current opt-in arrangements have been established to recognise "the variation in business models and product offerings". As a result, signatories can "nominate the provisions to which they commit to using" and are "not bound to comply with the commitments" that they have not nominated (Code, Section 7.1). They can withdraw from particular commitments or the ACPDM altogether simply by advising DIGI (Code, Section 7.2).

If the Code is to have a significant effect and represent an industry standard, an opt out approach is more appropriate. The ACPDM has been developed by The Digital Industry Group Inc (DIGI), which represents the interests and advocates the perspectives of the digital industry in Australia, and so has been well-positioned to develop a Code that is effective and workable for platforms overall, regardless of size. This recommendation encourages consistency in adherence to the ACPDM through a requirement that platforms follow all optional provisions unless it identifies a reason to opt out. If there are other ways that the platform could observe the spirit and intention of the ACPDM provisions it has opted out of, the platform should outline what alternative actions, approaches or interventions it will take that are more suited the platform's business model, revenue base and product offerings. This allows flexibility for platforms that may need to develop alternative approaches to comply with guidelines developed by the ACMA and *Regulating in the Digital Age: Government Response and Implementation Roadmap*.

3. Should the definition of harm be amended to deal with concerns about the narrowness of ‘serious and imminent threat’ language?

Recommendation 4: The word “imminent” should be removed from the definition of harm, and a clarification should be added that threat may be imminent or may result from cumulative disinformation or misinformation that is circulated over time.

Removal of the word “imminent” reflects the regulatory language and intent of the Australian Competition and Consumer Commission’s (ACCC’s) Digital Platforms Inquiry, which recommended that: “Application of the code should be restricted to complaints about disinformation that meet a ‘serious public detriment’ threshold as defined in the code” (ACCC, 2019, p. 370). The addition of “imminent” suggests that risk of harm must be immediate and intense, thus neglecting the potential noted by the ACMA and others for the cumulative impact of untrue or distorted information over time.

Chronic harms are harms that result from the cumulative effect of misinformation, and may only become apparent over time.... Societies around the world are grappling with coordinated campaigns designed to sow confusion and distrust and to undermine democratic institutions over time. There is a substantial risk to Australian society and its security if misinformation contributing to chronic harms is not adequately addressed. (ACMA, 2020, p. 12)

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?

Recommendation 5: The wording about the 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. This exception would no longer apply if such news and other journalistic content is manipulated or used out of context by other parties in ways that distorts the interpretation of the original report.

Section 4.4 of the ACPDM, titled “Excluded content”, defines “news content that is the subject of a published editorial code which sets out content standards and or/complaints mechanisms”. Section 4.4’s title needs to be reworded to clarify that news content is not excluded from the Code altogether, but instead is “Content excluded from the definition of disinformation or misinformation”.

The words “and/or” should be changed to “and”, because the latter category of a “complaints mechanism” alone is insufficient to ensure that editorial standards are upheld. A written ethics code or editorial guidelines is a requisite in newsrooms that identify and expect their staff to apply mandatory professional benchmarks in fact-checking, balanced reporting, appropriate contextualisation of facts and issues, etc. A complaints mechanism is a required addition and not an alternative to having a written ethics code or editorial guidelines.

The *Australian Code of Practice on Misinformation and Disinformation – 2022 Review Discussion Paper* (DIGI, 2022d) proposes six criteria that could each be used to determine

whether Australian or international news content should be considered exempt from Code provisions. The criteria outlined in the 'Proposed Update' number 3.7 of the *2022 Review Discussion Paper* are that the news content creator 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 regulating its standard of editorial practice in other 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 complaints about the quality of its news coverage; or
- f) has editorial independence from the subjects of its news coverage. (DIGI, 2022d, p. 19-20)

The criteria outlined in (e) and (f) of Proposal 3 should be removed as separate criteria. They are insufficient by themselves, and should be minimums in combination with a written code of ethics, code of practice or editorial standards. As is discussed above, a complaints mechanism should be accompanied by a code of ethics, code of practice or editorial standards. Similarly, while claiming to have editorial independence from the individuals or subjects that are addressed in news content is insufficient alone. Editorial independence reduces the risk that journalists or editors may be subject to obligations or conflicts of interest that might result from owners/managers, advertisers/other funding sources, financial/other connections with sources of news reports, etc. While editorial autonomy is important, it does not address other crucial elements of credibility and reliability that are addressed in journalism code of ethics that instils professional standards of fact-checking, balanced reporting, appropriate contextualisation of facts and issues, etc. The exemption should not apply to news content creators that do not have either a code of ethics, a code of practice or editorial standards.

As a case in point, the website of the US right-wing news and opinion site, *Breitbart News*, offers a mechanism for “providing comments and inquiries, including specific concerns about factual inaccuracies”. It has published a statement about its editorial independence (*Breitbart News*, 2022a). *Breitbart News* does not, however, list a code of ethics. The absence of a reference to a code of ethics forms an interesting contrast to the 5637 words on its “Terms of Use” about conditions for people who visit or use its news service (*Breitbart News*, 2022b). Washington University researchers have reported that *Breitbart* tweets amplified misleading stories about the 2020 election in the United States (Kennedy et al, 2022). The US Center for Countering Digital Hate (CCHD) reports *Breitbart* is one of the leading sources on Facebook of climate change denial information (CCDH, 2021). Digital media industry evaluations of the merit of *Breitbart News* content varies considerably. Wikipedia has ruled that “it should not be used, ever, as a reference for facts, due to its unreliability” (Wikipedia, 2018). Facebook, by contrast, reportedly added *Breitbart News* as a reliable news source to Facebook’s new news initiative (Smith & Frier, 2019) – a claim that Facebook has not confirmed or denied. The polarisation over the informational integrity of

Breitbart News about its content standards indicates the problems that could arise if the ACPDM were to exempt journalistic work from news content creators that do not appear to follow a code of ethics.

Taking these matters into consideration, news and other journalistic content from international sources should only be exempt if such content originates from media organisations or other news content creators that are committed to a code of ethics, code of practice or editorial standards that enshrine core principles of integrity, accuracy and balance. Although there are variations between codes, the main principles of relevance in this situation are the requirements to:

- verify information,
- provide a fair and balanced account in journalistic reports and representations,
- disclose facts that are essential to the context,
- avoid oversimplification or improper emphasis that may lead to misrepresentation or distortion of the facts or context of the reporting,
- acknowledge the source of information, analysis and opinions, and
- maintain independence by not allowing any conflict of interest to influence the gathering, editing or presentation of news, analysis or other information.

The ACMA argues that the ACPDM definition of excluded content should be further refined to clarify how content from international media organisations/content creators should be treated (2022a, p. 56). News and current affairs reports, analysis and other journalistic content from international news sources are important to Australians, as we live in an interconnected world. Notably, international news sources are often accessed from social media platforms that carry mis- and disinformation, and titles without ethical standards may use formats that are relatively indistinguishable from titles that do follow a code of ethics. For this reason, the definition provided in the paragraph above – which includes a requirement for a code of ethics, code of practice or editorial standards that include criteria for integrity, accuracy, and balance – is suitable for any Australian or international news content creators that do not follow the Australian Press Council Standards of Practice, 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.

Recommendation 6: News aggregation services should be included in the ACPDM, however, they may be exempt from responsibility for the news and journalistic content that they circulate. Instead, their inclusion would address the risk of external manipulation through algorithmic gaming and optimisation techniques of the ranking of news content, as well as the risks of harm from any social news content and unfiltered comments.

News aggregation services such as Apple News and Reddit are significant sources of news for many Australians, thus they should be included in the ACPDM. Consideration is needed, however, of the varying operations of news aggregation services. News aggregators such as Apple News and MSN use algorithms and human editors to select stories from a range of recognised mainstream and alternative news organisations. They also usually have a code of ethics and complaints system. By contrast, with social news aggregators, it is users who collectively submit and rate news stories and other journalistic content. Digg was one of the

earlier aggregators, with Reddit following soon afterwards. Notably Reddit contains a substantive quantity and variety of user-generated and shared content in addition to news and other journalism, such as public relations messages, commentary, community notices, pornography and other content posted by members. As such, only news content rather than the full range of content could be considered exempt for a social news aggregator.

Policies and practices relating to comments on aggregation services also vary considerably. Australian print and online news and journalism services that accept community comments or user-generated content have moderation processes that seek to filter harmful contents such as disinformation and misinformation before they are shared with the public. By contrast, policies of news aggregators vary in relation to comments, and these services can be substantive sources of disinformation, misinformation and other problematic content. Some news aggregators, such as Yahoo! News, have intermittently suspended comments due to the complexity of handling such material, and legal demands on media companies following the *Voller vs Nationwide News* ruling, which held that they could be considered the publishers of comments left by third-party users on their public Facebook pages (High Court of Australia, 2020). As an example, on July 14, 2022, all stories on the Australian Yahoo! News service had a message at the bottom stating: “Our goal is to create a safe and engaging place for users to connect over interests and passions. In order to improve our community experience, we are temporarily suspending article commenting.” By contrast, other services have relatively little filtering outside community voting. This can lead to disinformation and misinformation being embedded in comments, as well as coordinated upvoting or downvoting to artificially increase or decrease the prominence of particular news items.

The ACPDM currently notes that signatories are not required to “signal the veracity of content uploaded and shared by their users” (DIGI, 2022d, §5.6). News aggregation services as much as social media platforms should nevertheless employ professional community managers to advise on and manage the processes for moderating user generated content (Paech, 2021), and take advantage of the new automated tools for filtering harmful content.

5. Should the code be extended to include private messaging services?

Recommendation 7: Private messaging services should be covered by the ACPDM, or if not, an alternative code should be developed for such services.

Managing disinformation and misinformation through major platforms such as Facebook, Twitter and similar platforms is not always sufficient to inhibit the spread of such content, particularly conspiracy theories. Once content is removed or labelled on social media platforms, circulators of disinformation/misinformation regularly shift to private messaging systems such as Snapchat, WhatsApp, Telegram and similar services to transmit messages through groups or direct message campaigns. Messaging services prioritise user privacy through mechanisms such as end-to-end encryption, and they have expressed concern about how applications of codes such as the ACPDM may impact on privacy. The terms of the ACPDM, however, allow for a balance between protections of users’ privacy, freedom of expression and other human rights against measures to address the circulation and impact of disinformation and misinformation. Private messaging services should not be expected to

monitor private conversations between users, however, such services have started to implement other types of solutions, such as WhatsApp's limits on forwarding and group sizes. Messaging services need to be encouraged to engage in further innovation to develop creative systems and strategies for addressing disinformation and misinformation, with an obligation to research and implement technical and policy responses that can assist. The Asian messaging service, Line, for example, has partnered with regional fact checking organisations to run a real time, suspicious information reporting and checking service (Deck & Elliott, 2021).

Certain objectives within the ACPDM are applicable to messaging services and do not inherently involve monitoring and control of messages for disinformation or misinformation. These objectives include empowering consumers to better identify false information, supporting strategic research, publicising measures to combat disinformation and misinformation, etc. JERAA argues that the ACPDM provides workable arrangements for private messaging services, and they have not developed an alternative code, thus the Code should be considered applicable to them.

Other matters relating to ACPDM efficacy and provisions

In relation to the recommendations proposed in response to question 2 above about opt-in versus opt-out approaches, the distinction between the two may be meaningless unless the ACPDM's administrator maintains practices that ensure transparency, and provide up-to-date and relevant information about Code signatories, and detailed documentation of their compliance with the Code.

Recommendations 8 and 9 below are essential transparency of platforms by assuring that there is effective governance of the ACPDM through a mechanism for the public to complain to an independent party about potential Code breaches and demonstrating evidence of compliance to the Code. The ACPDM's value lies in assuring that signatories will be accountable for all Code provisions that they have not opted out of.

Recommendation 8: 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.

The ACPDM establishes that members of the public can complain to "a facility for addressing non-compliance" if they believe that a Code signatory has not fulfilled its obligations under the ACPDM (DIGI, 2022c, §7.4). In practice, however, the current system creates a burden for members of the public due to insufficient provision of information to allow them to undertake a complaints process that requires them to do all of the following:

- identify whether the platform they are concerned about has signed up to the ACPDM,
- ascertain which of the optional sections of the Code that the relevant platform has signed up to,

- complain to the relevant platform about the perceived breach of a particular sections of the Code (unless it is impossible to make such a complaint),
- if not satisfied with the platform's response, complain to DIGI about the breaches of those sections of the Code.

This is unreasonable, because members of the public are generally not scholars and usually have limited time and technical capacity to undertake such activities. As a practical measure to ensure that the ACPDM is administered in an effective, transparent way, the webpage of DIGI or other administrator must list the major services operating in Australia and indicate whether each has:

- adopted the Code in full,
- adopted the Code but opted out of particular sections, and if so, also specify what sections that service has opted out of (and, if possible, provide a link to its statements of its alternative approach to those specific sections),
- opted out of the Code altogether (and, if possible, provide a link to those services' own codes for disinformation and misinformation).

Additionally, the site should link to each platform's webpage that advises how members of the public can raise concerns about disinformation/misinformation and other matters pertaining to the seven objectives and 10 outcomes. DIGI's website currently does not have easily accessible information about the second and third options or how best to raise concerns with platforms.

Complainants may also be deterred by the technical nature of the language on DIGI's Disinformation Code webpages. While members of the digital industry that DIGI represents would find the language on the Disinformation Code pages straightforward, ordinary community members would find such the pages hard to navigate and understand, particularly if they have not undertaken higher education. Even the page layout of DIGI's website may hinder an everyday member of the community. 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 use of the word "materially" in the guidelines could also restrain complaints: "Please note that DIGI only accepts complaints from the Australian public where they believe a signatory has materially breached the code's commitments" (DIGI, 2022b). "Materially" means either (i) something that is important or considerable in scale or (ii) something that pertains to matter, material things and physical conditions. Clearly online disinformation or misinformation is not "material" in the physical sense, but the former definition that implies complaints can only address matters that are highly substantive in scale. By contrast, the ACPDM says that complaints can be made in relation to non-compliance with "general commitments" and "breaches that have not been acted upon by Signatories" (DIGI, 2022c, §7.4). This indicates that community members can complain about any breach of the ACPDM and not only matters that are highly substantive in scale. Additionally, individual complainants are left to determine for themselves whether their concerns are sufficiently "material" or substantive to warrant being considered by DIGI. Examples of matters which may be complained about should be given to aid public comprehension.

Recommendation 9: Regardless of whether there is an opt-in or opt-out approach, there should be stronger requirements for reporting of adherence to the ACPDM to maintain signatory status to the Code. Signatories' commitment to the ACPDM must be meaningful; they must be able to demonstrate through their annual reports whether and how they have met the Code's requirements. The current transparency reports vary considerably in their content, and in some cases, it is hard to use them to determine whether activities have been undertaken have been substantive versus tokenistic in nature. Reports must outline which products are covered by the ACPDM and provide sufficient detail to enable evaluation of whether and how they have met their required commitment to the Code.

JERAA argues that the Code must have stronger and more detailed requirements for signatories to reporting adherence to its requirements. The first reports under the Code (DIGI, 2022e) do not give comparable data on the level of action on flagging or reporting of dis- and misinformation, or the impact on user viewing of misleading content labelled with warnings, and masked from view or not. In these senses and others transparency reports do not give sufficient detail for researchers to establish the extent to which signatories have, for example, successfully reduced the propagation of false and misleading content, or managed to reduce user exposure to this content.

JERAA makes two proposals in recommendation 9 above, regarding mandatory reporting of adherence to the Code, and signatory provision of sufficient information about the extent to which they are addressing their Code commitments. JERAA argues that greater platform transparency about the moderation and labelling of dis- and misinformation is essential to the success of this co-regulatory initiative. They underpin the capacity of the ACMA or the Australian federal government to monitor the efficacy of the Code. They also ensure that the public has sufficient information about platform governance activities to support complaints actions.

Further information

For further information or queries, please contact:

Dr Angela Romano
JERAA Vice President (Networks)
Associate Professor of Journalism, Queensland University of Technology
Level 5, Z6, Creative Industries Precinct
Queensland University of Technology
Musk Avenue
Kelvin Grove QLD 4059
Australia
Phone: (07) 3138 8162
Email: a.romano@qut.edu.au

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