ABC submission to the Review of the Australian Code of Practice on Misinformation and Disinformation

July 2022



1. Introduction

The Australian Broadcasting Corporation ("the ABC") welcomes the opportunity to provide input to the Digital Industry Group Inc.'s (DIGI) review of the Australian Code of Practice on Disinformation and Misinformation ("the ACPDM").

While the ACPDM does not apply to the ABC, as the national public broadcaster and Australia's most trusted source of news and information, the ABC has a strong interest in ensuring that Australians can easily access accurate and impartial news and information across all news media organisations and platforms.

The challenges presented by the proliferation of disinformation and misinformation in the online Australian and international media ecosystem have been documented in several recent reports. The Australian Government has recognised that these issues are a cause for concern that requires policy attention, noting the need to also balance other policy objectives such as protecting freedom of speech.

The introduction of the ACPDM in February 2021 was in response to Australian Government policy.¹ The ACPDM's core objective to which all signatories must abide is to "Provide safeguards against Harms that may arise from Disinformation and Misinformation", including with the purpose of reducing the risk of Harms that may arise from the propagation of Disinformation and Misinformation on digital platforms.²

The ACPDM has now been in operation for over 12 months. Soon after it commenced, the Australian Communications and Media Authority ("the ACMA") provided a report to the Australian Government on the adequacy of digital platforms' disinformation and news quality measures outlined in the ACPDM.³ It is a useful juncture to step back and consider whether the ACPDM is delivering on its intended objectives.

The Discussion Paper released by DIGI sets out the background for the review, and specific questions for consultation, including on proposed changes to the code and reflections on the ACMA's June 2021 report. This submission provides feedback on selected areas, and where relevant, raises some questions of clarification.

2. Scope of signatories

Q: 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?

The indicative threshold for participation in the ACPDM discussed during its development was digital platforms that have one million active monthly users in

¹ Australian Government (2019), Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry, 2019.

² DIGI (2021), Australian Code of Practice on Disinformation and Misinformation: An industry code of practice developed by the Digital Industry Group Inc. (DIGI), February 2021, pp.8-10.

³ ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, June 2021.

Australia. This was based on ACMA's (2020⁴) view that at a minimum the code should apply to the full range of digital platforms that were outlined in the Digital Platforms Inquiry terms of reference; and this type of threshold could be expected to capture the most widely used platforms, including Facebook, YouTube, Twitter, Google Search, Instagram, Snapchat, TikTok, LinkedIn, Google News and Apple News. The ACMA (2020) also anticipated that code signatories will change over time to adjust to new entrants and other market changes.

In its more recent report to Government, the ACMA (2021) said that DIGI should: continue to encourage other popular platforms, like Snapchat and Reddit, to sign up to the ACPDM even if they do not meet the proposed threshold of one million active monthly users; and actively publicise the involvement of any additional code signatories as soon as practicable after their signing.⁵

While the initial range of signatories to the ACPDM has been an encouraging start, ideally an even broader range of digital platforms would become signatories in the future and should be one of the overarching policy objectives. As the one million active monthly users is not actually a requirement for signing up to the ACPDM this leaves flexibility for other signatories below this threshold to come on board.

To this end, the ABC submits that 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, such as by lowering the quantitative threshold for average users per month (e.g. 500k active users per month) and/or establishing a set of other qualitative factors that could guide participation (e.g. impact of information, speed or broader dissemination, platforms offering information to the public at a national or regional level on a specialised/topical basis).

3. Opt-in versus Opt-out approach

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

The opt-in model is designed to accommodate variation in the business models and product offerings of digital platforms. Prior to the introduction of the ACPDM, in its submission to DIGI the ABC noted that there was a risk that an opt-in approach would provide too much flexibility for signatories to avoid commitments that would otherwise lead to improvements in addressing disinformation on their platforms.

Nevertheless, given that the opt-in model was retained for the inception of the ACPDM, it is encouraging that five out of the eight signatories have opted into all measures. Each signatory that chooses not to opt into specific commitments is required to provide a brief explanation of the reason, and these explanations are published on DIGI's website.

⁴ ACMA (2020), Misinformation and news quality on digital platforms in Australia: A position paper to guide code development, June 2020.

⁵ ACMA (2021), p.86.

DIGI has proposed to retain the opt-in model but with additional requirements on signatories.⁶ These include requirements for an annual re-assessment of the relevance of the provisions in the ACPDM and increased transparency around the products and services covered. These changes appear consistent with recommendations made by the ACMA (2021).

The ABC is supportive of these changes to strengthen the opt-in approach. An important factor in the future effectiveness of this approach is that signatories who elect not to opt into specific commitments provide a sufficient explanation for this decision and it is periodically re-examined. Over time, the ABC submits 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.

4. Definition of Harm

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

The ABC is supportive of amending the definition of Harm in the ACPDM to make it applicable to a broader range of disinformation and misinformation. The ABC agrees with the ACMA's view that the current definition is too narrow to provide adequate safeguards against the full range of harms caused by the propagation of disinformation and misinformation – most notably, because it is tied to the concept of a "serious" <u>and</u> "imminent" threat. As such, it could exclude a range of chronic harms that can result from the cumulative effect of disinformation and misinformation over time.

DIGI (2022) proposes to amend the definition of Harm in section 3.4 of the ACPDM with the clarifying note: "Note: an imminent and serious threat includes a situation where an accumulation of harms creates a persistent serious and imminent threat to A or B".⁷

This amendment is an improvement on the current definition. However, because the definition would still hinge on the concept of a threat being "imminent", there is still a risk it would not capture a range of other circumstances where the gradual or incremental spread of misinformation and disinformation can lead to harmful outcomes which cause serious public detriment, such as the gradual undermining of public trust in public institutions or professional and authoritative sources of information.

On this basis, the ABC submits that DIGI should consider widening of the definition of Harm in the ACPDM further, for example by:

- removing the word "imminent" from the definition
- if the new proposed note is retained, removing the word "persistent" which has the potential to undermine the purpose of the amendment

⁶ DIGI Discussion Paper, p.8.

⁷ DIGI Discussion paper, p. 9.

• adding other examples for sub-clause B, such as information which: erodes trust in public institutions and professional sources of information, presents threats to community cohesion; or creates public panic and social disruption.

In addition to the application of the definition of Harm in the ACPDM, the Code could benefit from also outlining the factors/criteria that signatories would likely consider when determining whether something is captured, such as the subject, content and context of the information, an understanding of who is spreading the information and why, and an understanding of the breadth and speed of dissemination.

5. Exemption of professional news content

Q: 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 ACPDM (section 4.4D) currently excludes news content "that is the subject of a published editorial code which sets out content standards and/or complaints mechanisms".

In its report to the Australian Government in June 2021, the ACMA raised questions about aspects of this exclusion, including that:

- the current drafting of section 4.4D appears to exclude professional news from the code as a whole (although DIGI has indicated that this is not the intention)
- the code leaves open the question of how news from sources not subject to an Australian professional editorial code is to be treated
- professional news content that does not present a high risk of harm at the publisher level can sometimes still present a higher risk once it is taken out of context.⁸

DIGI has proposed amendments to section 4.1 and 4.4 of the Code to address some of these issues. In summary, DIGI's amendments appear designed to clarify the scope of the exemption for "professional news content"; and to make clear that while news aggregation services are included within the scope of the code, the exemption for professional news content also applies to these services (except in specific instances).

As well as protecting freedom of speech, the ACPDM needs to allow for and protect the editorial independence of credible news organisations – who can be identified by their charter, governing rules, editorial policies and complaint handling. The ABC is supportive of an exemption in the ACPDM for professional news that is subject to robust editorial policies and clear complaint-handling processes. This is a sensible recognition that professional news content is already covered by separate processes, oversight and regulatory frameworks that promote accuracy and impartiality in reporting, with clear processes for complaints handling.

On the specific amendments proposed by DIGI to section 4.1 and 4.4 in the ACPDM, the ABC offers the following additional comments:

⁸ ACMA (2021), pp. 55-56.

- the definition of a news source remains relatively broad as outlined in the section 3 Glossary it may benefit from further explanation about how signatories would determine whether a platform/service meets these standards
- for completeness, the definition in section 3 should also include specific references to editorial policies published and administered by the national public broadcasters in Australia.

6. Extension to include private messaging services

Q: Should the code be extended to include private messaging services?

The ABC notes the exclusion of private messaging services from the scope of the ACPDM and that there would be some challenging issues to consider should these services be incorporated within the scope of the code. Nevertheless, the significant potential for misinformation and disinformation to spread across private messaging services remains of concern, particularly given the vast number of people that use these services. The specific platform or type of service aside, as with other examples of this type of information, relevant factors to consider would include the nature of the content, the extent of harm (or potential harm) caused (including the level of distribution) and the intent or purpose or the information.

The ABC submits that this is an issue that the ACMA should continue to monitor as part of its reporting back to Government on the adequacy of the ACPDM, with the potential to consider future amendments, for example, the continued exclusion of private messaging services from the ACPDM except for automated, mass distribution information that meets the definition of Harm. In the meantime, it would be valuable to understand if there are any other processes or practices that signatories adopt, outside the intended scope of the ACPDM, which attempt to deal with disinformation spread across private messaging services.

7. Complaint Handling

Q: 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?

A critical aspect of any industry code is to ensure that it contains adequate and effective complaint-handling processes. The ABC notes that the governance arrangements put in place to administer the ACPDM were not introduced until October 2021, and as such they were not reviewed in the ACMA's June 2021 report to Government on the adequacy of digital platforms' disinformation and news quality measures.

Nevertheless, in its earlier June 2020 Position Paper, the ACMA outlined its expectation that the code would require all signatories to implement a robust, effective and accessible complaints handling regime.

Now that the governance arrangements have been in place for a period of time it would be appropriate for the ACMA to review whether they meet these standards and how they compare to other relevant complaint-handling regimes.