
Submission

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Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper

Submission by the Australian Communications Consumer Action
Network (ACCAN) to Digital Industry Group Inc. (DIGI)

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Introduction

The Australian Communications Consumer Action Network (ACCAN) thanks the Digital Industries Group Inc. (DIGI) for the opportunity to provide feedback to the *Australian Code of Practice on Disinformation and Misinformation* (ACPDM or “the Code”).¹ The ACPDM was released in 2021 and is now due for a scheduled review. In June 2022 DIGI released a discussion paper titled *Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper*.² The review will draw on stakeholder submissions as well as a 2021 review of the ACPDM by the Australian Communications and Media Authority (ACMA).³ ACMA’s report on the Code, publicly released in March 2022, listed 48 findings and made five recommendations. ACCAN’s submission draws on both the Discussion paper and the ACMA’s 2021 report.

The review is timely. Australians are still concerned by online misinformation and the global policy discussion around mis- and disinformation continues to develop. For example, the European Union (EU) has recently “strengthened” its Code of Practice on Disinformation.⁴ Misinformation is broadly defined in the Australian Code as Digital Content that is verifiably false or misleading or deceptive that is propagated by users of digital platforms and the dissemination of which is reasonably likely (but may not be clearly intended to) cause Harm.⁵ Disinformation is identified as Digital Content that is verifiably false or misleading or deceptive, is propagated amongst users of digital platforms via Inauthentic Behaviours and the dissemination of which is reasonably likely to cause Harm.⁶ Put simply, misinformation often refers to content shared through normal use of a service while disinformation often refers to an intentional effort to spread misinformation.

This submission will provide ACCAN’s perspective on the questions raised in the Discussion paper. As the leading voice for communications consumers in Australia, ACCAN submitted to the draft Code in 2020 and wrote about the complaints process in 2022.⁷ It is good to see that the ACMA intends to continue to monitor the Code and that DIGI is supportive of that engagement.

¹ DIGI 2021. *Australian Code of Practice on Disinformation and Misinformation*. Available at: <https://digi.org.au/wp-content/uploads/2021/10/Australian-Code-of-Practice-on-Disinformation-and-Misinformation-FINAL-WORD-UPDATED-OCTOBER-11-2021.pdf>

² DIGI 2022. *Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper*. Available at: <https://digi.org.au/disinformation-code/code-review/>

³ ACMA 2021. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

⁴ European Commission 2022. *2022 Strengthened Code of Practice on Disinformation*. Available at: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

⁵ DIGI 2021, p.6. *Australian Code of Practice on Disinformation and Misinformation*. Available at: <https://digi.org.au/wp-content/uploads/2021/10/Australian-Code-of-Practice-on-Disinformation-and-Misinformation-FINAL-WORD-UPDATED-OCTOBER-11-2021.pdf>

⁶ DIGI 2021, p.5. *Australian Code of Practice on Disinformation and Misinformation*. Available at: <https://digi.org.au/wp-content/uploads/2021/10/Australian-Code-of-Practice-on-Disinformation-and-Misinformation-FINAL-WORD-UPDATED-OCTOBER-11-2021.pdf>

⁷ ACCAN 2022. *Disinformation and Misinformation on Digital Platforms*. Available at: <https://accan.org.au/media-centre/hot-issues-blog/1960-disinformation-and-misinformation-on-digital-platforms>

The following submission is divided into four sections. The first section responds to the pressing need to better publicise the Code to the Australian public. The following three sections engage with the eight questions raised in the discussion paper. Section two engages with question eight to reiterate ACCAN's firm support for misinformation to remain in the Code. Section three addresses questions of scope in the Code. Section four speaks to questions of clarification in the Code. ACCAN makes 12 recommendations across these four sections. ACCAN is available to provide further information on any of the recommendations made in this submission.

List of Recommendations

- Recommendation 1:** The Code should be meaningfully publicised to the Australian public across a range of advertising channels including broadcast television, radio, print, outdoor advertising, and digital platforms. Signatories to the Code should provide appropriate funding to DIGI to carry out this public education initiative.
- Recommendation 2:** The Code should continue to address both misinformation and disinformation.
- Recommendation 3:** The Code should be amended to require signatories to provide users with tools and educational materials to better control how their data is used and how digital content is presented to them via recommender systems.
- Recommendation 4:** ACCAN supports the ACMA's recommendations that the ACMA should continue to play a role in overseeing The Code, including its scope.
- Recommendation 5:** Section 7 of the Code should include a clause that DIGI will maintain a complete and up-to-date list of all Code signatories.
- Recommendation 6:** Section 5.27 of the Code should be amended to provide more detail around an annual stakeholder event.
- Recommendation 7:** The decision on whether to include private messaging services in the Code should be revisited in the next review. A well-informed consideration requires careful balance between the minimisation of harms and freedom of expression.
- Recommendation 8:** The Code should be amended so that professional news is not exempted from misinformation considerations. News aggregation services should be included in the scope of the Code.
- Recommendation 9:** The Code should require an opt-out approach to optional commitments to ensure maximum protection for consumers and transparency for stakeholders.
- Recommendation 10:** "Imminent" should be removed from the definition of harm in section 3.4 of the Code.
- Recommendation 11:** Issues-based advertising should be clearly defined in the Code but should not be excluded from considerations of misinformation. Users should be provided with greater transparency as to the source of issues-based advertising and provided with tools to control advertising they see as well as report mis- and disinformation.
- Recommendation 12:** ACCAN supports DIGI's proposed definition of sponsored content. ACCAN supports the ACMA's requirement for greater transparency and proactive measures to reflect digital platforms' increased responsibility regarding sponsored content.

Responses to ACPMD 2022 Review Discussion Paper

2.1 The need to publicise the Code and complaints process

Effective codes of practice rely on consumers knowing that codes exist and easily being able to access and navigate the complaints process. As the Australian Competition and Consumer Commission (ACCC) states, an “effective code should incorporate a strategy that will raise consumers’ awareness of the code and its contents, including its complaints handling provisions”.⁸ This point is echoed again by the ACMA in its recent position paper for content providers. The ACMA notes that best practice approaches to transparency in industry codes should

- Provide clear information about how to complain about possible violations of those protections and how unresolved complaints may be escalated and to whom.
- Promote to audiences that protections exist and what they can do if they think there is a problem⁹

Industry codes need to be effectively promoted to the public to ensure that consumers are aware that the codes exist but also educate consumers on how they can apply the codes in their lives.

The recently revised EU code of practice partly addresses this need through measure 17.2 on enhancing media literacy:

Relevant Signatories will develop, promote and/or support or continue to run activities to improve media literacy and critical thinking such as campaigns to raise awareness about Disinformation, as well as the TTPs that are being used by malicious actors, among the general public across the European Union, also considering the involvement of vulnerable communities.¹⁰

However, the EU code falls short of explicit commitments to promote the code across a wide range of media.

Noting that the ACCC and ACMA argue that effective industry codes require effective public awareness, ACCAN recommends that a meaningful publicity campaign should be a priority. As DIGI’s ACPDM Annual Report notes, there were only eight complaints received through the complaints portal since it was launched and none of them were deemed eligible to progress to the complaints sub-committee.¹¹ Clearly more work is required to ensure that the Australian public is aware that the

⁸ ACCC 2011, p.11. *Guidelines for developing effective voluntary industry codes of conduct*. Available at: <https://www.accc.gov.au/system/files/Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>

⁹ ACMA 2022, p.39. *What audiences want – Audience expectations for content safeguards*. Available at: <https://www.acma.gov.au/publications/2022-06/report/what-audiences-want-audience-expectations-content-safeguards>

¹⁰ European Commission 2022, p.19. *2022 Strengthened Code of Practice on Disinformation*. Available at: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

¹¹ DIGI 2022, p.12-13. *Australian Code of Practice on Disinformation and Misinformation | Annual Report*. Available at: <https://digi.org.au/wp-content/uploads/2022/05/ACPDM-Annual-Report-Published-June-6-2022-FINAL.pdf>

Code exists, what the commitments mean and what a member of the public should do if they think that a signatory has breached their commitments in the Code. To ensure that the campaign reaches those that are less digitally included, it should use a range of advertising channels, including broadcast television, radio, print, outdoor advertising and digital platforms. The publicity campaign should be managed by DIGI and paid for by signatories to the Code.

Recommendation 1: The Code should be meaningfully publicised to the Australian public across a range of advertising channels including broadcast television, radio, print, outdoor advertising, and digital platforms. Signatories to the Code should provide appropriate funding to DIGI to carry out this public education initiative.

2.2 Response to question of including misinformation

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?

Balancing concerns around misinformation and disinformation and online freedom of expression is important. Section 2.1 of the ACPMD affirms The Code's commitment to protecting the Australian community's freedom of expression. Question eight of the Discussion Paper asks if the Code strikes the right balance between public interest and freedom of speech by including misinformation in addition to disinformation. However, the decision whether to continue to include misinformation within the ACPMD is not a binary decision between allowing or preventing misinformation online. It should be recognised as an effort to reduce the effects of digital platform design that has contributed to public concern.

While conspiracy theories predate digital platforms, much of the public concern around misinformation and disinformation stems from the design of digital platforms. Section 1.2 of The Code notes that disinformation and misinformation are part of a "wider, multifaceted social problem which involves a range of offline and online behaviours".¹² There is little doubt that online misinformation and disinformation are linked to larger social and political contexts but that the design of digital platforms contributes to that milieu. Finding five in the ACMA's report found that "Misinformation typically stems from small online conspiratorial communities, but can be amplified by influential individuals, digital platform design, as well as the media".¹³ It noted that

¹² DIGI 2021, p.2. *Australian Code of Practice on Disinformation and Misinformation*. Available at: <https://digi.org.au/wp-content/uploads/2021/10/Australian-Code-of-Practice-on-Disinformation-and-Misinformation-FINAL-WORD-UPDATED-OCTOBER-11-2021.pdf>

¹³ ACMA 2021, p.29. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

Online misinformation is often characterised as a ‘rabbit hole’. The user journey may start innocuously, such as by engaging with a piece of online content raising legitimate concerns around vaccine safety. However, surrounding discussions often contain pathways to misinformation, such as links to anti-vaccine conspiracy websites, or invitations to join online communities of like-minded people.¹⁴

In other words, the design of digital platforms can contribute to and accelerate the spread of misinformation and disinformation.

Recognising that platform design contributes to the spread of misinformation, it is important that misinformation is kept in the code. Finding 23 of the ACMA’s report noted that “The code covers both disinformation and misinformation. This is one of the key strengths of the code, and is an improvement on the current EU Code”.¹⁵ ACCAN agrees with the ACMA and supports the decision to keep misinformation in the Code.

Recommendation 2: The Code should continue to address both misinformation and disinformation.

Recognising that the system design of platforms contributes to the dissemination of misinformation, the Code should include more detailed commitments from signatories to empower and inform consumers. The ACMA report notes that

More-detailed commitments to improve the online information environment could include measures that address the role that system design can play in the propagation of disinformation and misinformation, and a commitment to increased transparency over the criteria that platforms (or their algorithms) use to assess the quality of information and to prioritise content.¹⁶

As research commissioned by DIGI has found, people use different definitions of misinformation.¹⁷ This indicates the need for more public education and information tools and resources. These tools and resources should provide users with greater ability to understand and control how digital services use personal data in conjunction with the system design of platforms, including recommender systems. This need is reflected in commitment 19 of the EU’s Strengthened Code of Practice:

¹⁴ ACMA 2021, p.24. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

¹⁵ ACMA 2021, p.87. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

¹⁶ ACMA 2021, p.59. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

¹⁷ DIGI 2022. Australian Code of Practice on Disinformation and Misinformation | Annual Report. Available at: <https://digi.org.au/wp-content/uploads/2022/05/ACPD-Annual-Report-Published-June-6-2022-FINAL.pdf>

Relevant Signatories using recommender systems commit to make them transparent to the recipients regarding the main criteria and parameters used for prioritising or deprioritising information, and provide options to users about recommender systems, and make available information on those options.¹⁸

Commitment 19 requires signatories to provide users with more transparency about and control over recommendations systems. The commitment also requires signatories to report on how effective the new control settings have been in aggregate.¹⁹ The measures to empower users outlined in commitment 19 of the recent EU Disinformation Code of Practice should be adapted for the Australian Code of Practice.

Recommendation 3: The Code should be amended to require signatories to provide users with tools and educational materials to better control how their data is used and how digital content is presented to them via recommender systems.

2.3 Response to questions of scope

- 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?

Question one of the Discussion paper asks whether the Code should cover a broader range of signatories and inquires how signatories should be identified. The first part of the question inquires as to what role the ACMA should play.

Recommendations two, three and four in the ACMA's report relate to the ACMA's continued role in identifying potential signatories and the criteria for a company to be eligible to participate in the code.

Recommendation 2: The ACMA will continue to oversee the operation of the code and should report to government on its effectiveness no later than the end of the 2022–23 financial year. The ACMA should also continue to undertake relevant research to inform government on the state of disinformation and misinformation in Australia.

Recommendation 3: To incentivise greater transparency, the ACMA should be provided with formal information-gathering powers (including powers to make record keeping rules) to oversee digital platforms, including the ability to request Australia-specific data on the effectiveness of measures to address disinformation and misinformation.

Recommendation 4: The government should provide the ACMA with reserve

¹⁸ European Commission 2022, p.21. *2022 Strengthened Code of Practice on Disinformation*. Available at: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

¹⁹ European Commission 2022, p.21. *2022 Strengthened Code of Practice on Disinformation*. Available at: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

powers to register industry codes, enforce industry code compliance, and make standards relating to the activities of digital platforms' corporations. These powers would provide a mechanism for further intervention if code administration arrangements prove inadequate, or the voluntary industry code fails.²⁰

These recommendations indicate that the ACMA sees a need for a continued role in monitoring the code including questions of scope. In a recent media release DIGI has indicated that it agrees with the ACMA's recommendations.²¹ Given the dynamic nature of misinformation and disinformation and the novelty of the Code ACCAN supports the ACMA's continued role in monitoring the code including its scope. An example of this is discussed below in regard to question five of the code and the inclusion of private messaging services.

Recommendation 4: ACCAN supports the ACMA's recommendations that the ACMA should continue to play a role in overseeing The Code, including its scope.

Regarding the sub question of platform criteria for inclusion in the code, the current threshold of one million active monthly users should be taken as a guide and should not preclude DIGI and the ACMA from encouraging companies to join if they have been identified as sources of mis and disinformation. Finding 18 of the ACMA's report noted that DIGI should encourage popular platforms to sign up to the code:

DIGI should continue to encourage other popular platforms, like Snapchat and Reddit, to sign up to the code, even if they do not meet the proposed threshold of one million active monthly users. DIGI should actively publicise the involvement of any additional code signatories as soon as practicable after their signing.²²

ACCAN agrees with the ACMA that the threshold should not discourage DIGI from engaging with other platforms to consider becoming signatories to The Code.

ACCAN also notes that the ACMA "remains concerned about the lack of transparency surrounding the signing of new digital platforms after the code's commencement date".²³ In its submission to the draft code ACCAN recommended that "there be an additional clause in this section [section 7],

²⁰ ACMA 2021, p.85. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

²¹ DIGI 2022. *DIGI welcomes release of ACMA report on Mis/Disinformation Code and supports its five key recommendations*. Available at: <https://digi.org.au/digi-welcomes-release-of-acma-report-on-misdisinformation-code-and-supports-its-five-key-recommendations/>

²² ACMA 2021, p.86. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

²³ ACMA 2021, p.45. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

requiring DIGI to publish a complete and up-to-date list of all Code signatories”.²⁴ ACCAN asserts that maintaining an up-to-date list of Code signatories would facilitate greater public transparency and accountability with the code.

Recommendation 5: Section 7 of the Code should include a clause that DIGI will maintain a complete and up-to-date list of all Code signatories.

The ACMA’s report’s fifth recommendation concerns cooperation between stakeholders. The ACMA recommends that

In addition to existing monitoring capabilities, the government should consider establishing a Misinformation and Disinformation Action Group to support collaboration and information-sharing between digital platforms, government agencies, researchers and NGOs on issues relating to disinformation and misinformation.²⁵

This echoes a suggestion ACCAN made to the draft Code regarding section 5.27. Section 5.27 states that “Relevant Signatories commit to convene an annual event to foster discussions regarding Disinformation and Misinformation within academia and Civil Society”. ACCAN suggests that this clause clarify what “relevant signatories” means and how they will be identified. Additionally, there needs to be clarity on how this will be publicised and promoted to interested stakeholders.

Recommendation 6: Section 5.27 of the Code should be amended to provide more detail around an annual stakeholder event.

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

The ACMA’s report notes that there are “growing concerns” that messaging platforms such as Facebook Messenger, Telegram, WhatsApp and WeChat “are potential hotspots for misinformation”.²⁶ Finding 25 of the ACMA’s report argues that

Private messaging services should be included within the scope of the code as these are known vectors of disinformation and misinformation.

²⁴ ACCAN 2020. DIGI Draft Disinformation Code. Available at: <https://accan.org.au/accans-work/submissions/1822-draft-disinformation-code>

²⁵ ACMA 2021, p.85. Report to government on the adequacy of digital platforms’ disinformation and news quality measures. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

²⁶ ACMA 2021, p.46. Report to government on the adequacy of digital platforms’ disinformation and news quality measures. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

These should be included with appropriate caveats on the right to privacy.²⁷

The ACMA also cites discussions in the European Union that messaging services could be included in its Code of Practice on Disinformation. A European Commission (EC) Guidance notes that messaging services can “can also be misused to fuel disinformation and misinformation” and should be considered as long as actions are coterminous with people’s right to privacy. The EC advocates for features that add “friction” to the spread of misinformation. As the EC notes, such

solutions should be compatible with the nature of these services and in particular the right to private communications, without any weakening of the encryption. Such features could, for example, help users to verify whether particular content they receive has been fact-checked as false. This could be achieved e.g. through solutions that make visible fact-checking labels when content from social media is disseminated over a messaging app. Signatories could also consider solutions that enable users to check content they received over a messaging application against a repository of fact-checks.²⁸

It appears that both the EC and the ACMA are advocating for automated mechanisms that slow mis and disinformation without the need for platforms to “access or view the content” and that “there should be no requirement or expectation that digital platforms should monitor private conversations between users”.²⁹ The ACMA’s report specifically mentions “online groups and semi-public channels such as one-to-many or many-to-many messaging services”. Several academic studies of misinformation on private messaging services, particularly WhatsApp, argue that misinformation is a serious problem on these services and suggest intervention through technical means.³⁰

ACCAN agrees messaging services are an important area to consider in terms of dis- and misinformation. ACCAN also agrees that people’s messaging privacy should be protected. While the Strengthened code of practice in the EU includes a commitment (25) to curb misinformation on messaging apps, there is limited detail around how it will be carried out. In ACCAN’s view 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. If, in future, private messaging services are included in

²⁷ ACMA 2021, p.87. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

²⁸ European Commission 2021, p.16. *European Commission Guidance on Strengthening the Code of Practice on Disinformation*. Available at: <https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation>

²⁹ ACMA 2021, p.54. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁰ For example see: Reis, J., Melo, P.D.F., Garimella, K. and Benevenuto, F., 2020. *Can WhatsApp benefit from debunked fact-checked stories to reduce misinformation?*. arXiv preprint arXiv:2006.02471. and: Banaji, S., Bhat, R., Agarwal, A., Passanha, N., and Sadhana Pravin, M. 2019. *Whatsapp vigilantes: an exploration of citizen reception and circulation of whatsapp misinformation linked to mob violence in india*. Available at: <https://blogs.lse.ac.uk/mediase/2019/11/11/whatsapp-vigilantes-an-exploration-of-citizen-reception-and-circulation-of-whatsapp-misinformation-linked-to-mob-violence-in-india/>

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.

Recommendation 7: The decision on whether to include private messaging services in the Code should be revisited in the next review. A well-informed consideration requires careful balance between the minimisation of harms and freedom of expression.

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?

In its review of the Code, the ACMA argues that professional news should not be excluded from misinformation and that news aggregators should clearly be included in the Code.³¹ Finding 26 of the ACMA report argues that

The code should clarify that the exclusion of professional news content applies only to the application of counter-misinformation measures. It should also clarify that news aggregation services are in scope.³²

ACCAN supports the decision to remove the exclusion of news content from misinformation considerations and to explicitly include news aggregators in the Code.

Recommendation 8: The Code should be amended so that professional news is not exempted from misinformation considerations. News aggregation services should be included in the scope of the Code.

2.4 Response to questions of application

Questions regarding application of the Code.

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

Finding 22 of the ACMA report notes that

The code should be strengthened by taking an opt-out approach. Opting out of an outcome should be permitted only where the outcome is not

³¹ ACMA 2021, p.55-56. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³² ACMA 2021, p.87. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

relevant to the signatory's services. Signatories should provide adequate justification when opting out.³³

The Code should provide the maximum protection for consumers and adopting an opt-out approach ensures that there is as much coverage as possible. DIGI suggests that many of the existing signatories are subscribed to all the measures in the Code and the opt-in approach could be kept with an annual review mechanism. However, an opt-out approach could encourage further action to prevent mis- and disinformation while providing stakeholders with transparency where a platform wishes to be excluded from a measure.

Recommendation 9: The Code should require an opt-out approach to optional commitments to ensure maximum protection for consumers and transparency for stakeholders.

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

Finding 24 of ACMA report argues that

The definition of harm in the code is too narrow to provide adequate safeguards against the full range of harms caused by the propagation of disinformation and misinformation.³⁴

The ACMA recommends that "imminent" should be removed from the Code's definition of harm as an "imminent and serious threat". According to the ACMA the test whether a harm is "imminent" could exclude some cumulative harms. DIGI proposes including a note in the definition of harm (section 3.4) that reads,

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.³⁵

ACCAN agrees that the inclusion of imminent may make it harder for consumers to understand the definition and potentially complicate the public uptake of the code. While including a note on the cumulative effect could go some way towards addressing this need, it would be clearer for consumers and other stakeholders to simply remove "imminent" from the definition.

³³ ACMA 2021, p.87. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁴ ACMA 2021, p.87. *Report to government on the adequacy of digital platforms' disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁵ DIGI 2022, p.8. *Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper*. Available at: <https://digi.org.au/disinformation-code/code-review/>

Recommendation 10: “Imminent” should be removed from the definition of harm in section 3.4 of the Code.

6) Should the approach of the code to issues-based advertising be clarified?

Political advertising is excluded from the code except for when it falls in the scope of disinformation. However, in its review of the Code the ACMA notes its concern regarding the lack of clarity around issues-based advertising. Issues-based advertising refers to

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.³⁶

In its review of the Code the ACMA argues that issues-based advertising “is a known vector of misinformation” and that it has “particular concern about the ability of micro-targeting technologies, which rely on user data, to direct advertisements containing false or misleading information at particular groups and not others”.³⁷ The ACMA recommends that in

addition to improving public awareness of the source of political advertising, the code should also cover the source of issues-based advertising.³⁸

To prevent this inclusion from unduly limiting political expression through paid media, the ACMA recommends that the Code adopt a similar approach to the EU code that seeks to provide more transparency around targeting. The EU code also tasks signatories with defining issues-based advertising in such a way to not limit reporting or legitimate political expression.

In the Discussion paper DIGI argues that it would be difficult to distinguish issues-based advertising from other categories of advertising, risking citizens’ ability to use advertising to advocate on areas of public concern. DIGI proposes the inclusion of a note to section 4.4 that excludes advertising “for the purpose of general advocacy on social issues”.³⁹ The proposed revisions in the code do not include a definition of “general advocacy” or include provisions to provide users with greater transparency around issues-based advertising. In sum, political advertising is overseen by electoral laws and is exempted from the code except where it is deemed to be disinformation but there is less clarity around advertising that addresses political and social issues but is not linked to elections. The

³⁶ ACMA 2021, p.56. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁷ ACMA 2021, p.56. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁸ ACMA 2021, p.87. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

³⁹ DIGI 2022, p.13. *Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper*. Available at: <https://digi.org.au/disinformation-code/code-review/>

balance is between protecting users from being targeted with misinformation that is excluded by the code and ensuring that advertising is still available for advocacy.

ACCAN understands that ensuring political expression is important and that paid media is an important channel for advocacy. However, given that issues-based advertising may be used as a vector of misinformation to micro-target individuals it seems that it would be important to include issues-based advertising in the Code. This would provide a mechanism to address paid misinformation campaigns that fall outside of electoral laws. ACCAN also strongly supports measures that offer users greater transparency around ad targeting and the source of political advertising. As well as tools for users to control their experience on digital platforms.

Recommendation 11: Issues-based advertising should be clearly defined in the Code but should not be excluded from considerations of misinformation. Users should be provided with greater transparency as to the source of issues-based advertising and provided with tools to control advertising they see as well as report mis- and disinformation.

7) Should the code better define paid and sponsored content?

The ACMA recommends that “treatment of paid and sponsored content should be made clearer in the code” and that the code should define sponsored content.⁴⁰ DIGI proposes that sponsored content should be defined in section three of the code as “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”.⁴¹

ACCAN agrees with the ACMA that digital platforms have a great responsibility for paid and sponsored content. ACCAN supports DIGI’s proposed definition of sponsored content to be included in section three of the Code. While DIGI’s proposed amendment does define sponsored content, signatories should provide greater clarity and “implement more proactive measures” as recommended by the ACMA.⁴²

Recommendation 12: ACCAN supports DIGI’s proposed definition of sponsored content. ACCAN supports the ACMA’s requirement for greater transparency and proactive measures to reflect digital platforms’ increased responsibility regarding sponsored content.

⁴⁰ ACMA 2021, p.57. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

⁴¹ DIGI 2022, p.13. *Australian Code of Practice on Misinformation and Disinformation | 2022 Review Discussion Paper*. Available at: <https://digi.org.au/disinformation-code/code-review/>

⁴² ACMA 2021, p.57. *Report to government on the adequacy of digital platforms’ disinformation and news quality measures*. Available at: <https://www.acma.gov.au/report-government-adequacy-digital-platforms-disinformation-and-news-quality-measures>

3. Conclusion

Addressing mis- and disinformation will require continued cooperation between relevant stakeholders and ACCAN thanks DIGI for the opportunity to contribute to the review. ACCAN is happy to discuss any of the comments made in this submission.

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