

Submission to

Review by the industry group DIGI of
*The Australian Code of Practice on
Disinformation and Misinformation*

from Croakey Health Media

18 July, 2022

CROAKEY HEALTH MEDIA

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1. Overview of Croakey Health Media

Croakey Health Media is an innovative non-profit public interest journalism organisation with a focus on public health, health equity, and the social determinants of health. We focus on communities and health issues that are under-served by mainstream media and policy, including rural, regional and remote communities. Aboriginal and Torres Strait Islander people provide leadership for our work, including through our governance. Our board is chaired by a leading Aboriginal health academic, Professor Megan Williams, who is Wiradjuri through paternal family and Head of Girra Maa, the Indigenous Health Discipline in the School of Public Health, Faculty of Health at University of Technology Sydney. Details on our board members can be seen [here](#).

Croakey Health Media's membership is based on our social journalism team, a multi-disciplinary network of journalism and health practitioners located across Australia. The members of our social journalism team can be seen [here](#), and include Aboriginal and Torres Strait Islander, non-Indigenous members and a global health journalist based in London. Croakey Health Media is a national organisation, headquartered in regional Tasmania and is a registered health charity. We provide a range of social journalism and professional services to enable communities, policy-makers and practitioners to improve health and wellbeing, with a determined focus on improving health equity. We take a local, regional, national and global focus, and bring a health-in-all-policies lens to our reporting.

Croakey Health Media's public interest journalism activities are supported by a blended funding model, including sponsorship, donations, subscriptions, the provision of professional services, advertising, and paid journalism activities, including the Croakey Conference News Service. Our funders and supporters are leading health organisations. As an organisation, one of our five strategic priorities is to create a sustainable environment for public interest journalism, acknowledging the importance of public interest journalism for contributing to our vision, that "a vigorous and sustainable public interest journalism sector contributes to the health and wellbeing of people, families, communities, policies, societies and the environment".

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As an organisation, we advocate for policy reform to support a health-promoting information and news ecosystem including through making submissions to reviews like this, and through journal and book publications, research, and presentations to conferences. Journalistically, we cover the market power of digital platforms as an important determinant of health.

See our related archives: <https://www.croakey.org/category/digital-platforms/>

2. Previous submission on the development of the code

In November 2020, Croakey Health Media **made a submission** to help inform development of the code and we have since participated in related consultation processes.

Our 2020 submission said:

- Croakey Health Media believes the most effective way to approach the global tide of disinformation and misinformation is through using public health frameworks and methodologies, as they have been so effective in tackling other public health concerns, such as tobacco, road safety and air pollution.
- We note the almost complete absence from the discussion paper of the public health literature that would be useful to help inform development of this code, especially during a time of global public health crises, including the COVID-19 pandemic and climate change. We noted that global efforts to control COVID have been undermined by the spread of conspiracy theories and disinformation on social media. We also noted that the World Health Assembly has called on Member States (including Australia) to take measures to counter misinformation and disinformation, and that the World Health Organization and other agencies issued a joint statement in September stating that “the technology we rely on to keep connected and informed is enabling and amplifying an infodemic that continues to undermine the global response and jeopardizes measures to control the pandemic”.
- We note the findings of an inquiry by a United States House of Representatives committee, “Investigation of competition in digital markets. Majority staff report and recommendations”, which investigated the market power of Amazon, Apple, Facebook, and Google and outlined potential benefits of systemic reform and regulation of the digital platforms that are important for both public interest journalism and public health. The inquiry found companies were using their dominant market power in ways that weaken democracy; erode diversity, entrepreneurship and innovation; degrade privacy online; and undermine the vibrancy of the free and diverse press (Available from: https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf). In such an environment, it is unrealistic to expect that an opt-in, self-regulatory code will have any significant impact upon the tide of disinformation and misinformation.

We recommended that:

- The Federal Government appoint an independent committee of appropriately qualified public health experts to report on the public health impacts of disinformation and misinformation and to make evidence-based recommendations for policy reform, drawing upon the public health literature. This committee should include Aboriginal and Torres Strait Islander researchers and organisations. It should include specific consideration of policies and strategies for addressing the spread of racism, hate speech and white supremacy as part of the tide of disinformation. The Federal Government should fund its work, to ensure independence and also to recompense organisations and individuals for their time, noting that the sector is under great pressure.
- The capacity of the public interest journalism sector to investigate disinformation and misinformation should be strengthened through policy reform. This should be done independently of the digital platforms to avoid conflicts of interest. The potential of regulation of the digital platforms to generate funding for public interest journalism should be explored [beyond the Mandatory Code developed to govern commercial relationships between media publishers and the digital platforms].
- **Our preferred option would be for a mandatory code to be developed independently of industry, with public interest and public health expertise informing the process.**
- If the code was to proceed, there should be an independently developed framework to monitor and report on its impact, with the digital platforms facing a range of sanctions for breaches. Sanctions should be sizeable for companies that sell advertising to sites spreading disinformation or that benefit in other ways from such sites. The code should be independently reviewed after its first year of operations. The committee that administers the code should include representatives of civil society, the public health sector, and the public interest journalism sector. Industry representatives should be in the minority. Likewise, the committee responding to complaints should be independent of industry.

3. A report to government on the adequacy of digital platforms' disinformation and news quality measures

We note that the above report published by ACMA in June 2021 made some positive observations about the development and implementation of the code, which launched in February 2021, including that its scope was expanded to cover misinformation as well as disinformation. However, the ACMA report also raised a number of important concerns, including:

- A continuing high level of reports of online disinformation and misinformation, particularly in relation to COVID-19. “The propagation of these falsehoods and conspiracies undermines public health efforts, causes harm to individuals, businesses and democratic institutions, and in some cases, incites individuals to carry out acts of violence,” said the report.
- The ACMA expected DIGI to undertake a full and open consultation on the code. On release of the draft code, despite reaching out directly to a wide range of stakeholders, DIGI made little effort to attract a broader range of public views. It did not put out a media statement, post an update on its social media channels, or pursue any other public communication avenues to increase awareness of the consultation process beyond those organisations it had originally identified. ACMA considers more should have been done to canvass a wider range of views across the community. This includes among relevant health experts, organisations representing CALD communities, a broader cross-section of media organisations, and users of major platforms.
- The scope of the code is limited by its definitions. In particular, a threshold of both ‘serious’ and ‘imminent’ harm must be reached before action is required under the code. The effect of this is that signatories could comply with the code without having to take any action on the type of information which can, over time, contribute to a range of chronic harms, such as reductions in community cohesion and a lessening of trust in public institutions.
- The code should also be strengthened through an opt-out rather than opt-in model. Signatories should only be permitted to opt out of outcomes where that outcome is not relevant to their service and be required to provide justification for the decision.

- The code is also limited in the types of services and products it covers. Private messaging is excluded, despite increasing concern about the propagation of disinformation and misinformation through these services, particularly when used to broadcast to large groups. Including messaging services within the code, with appropriate caveats to protect user privacy (including the content of private messages), would provide important consumer protections.
- ACMA also considered improvements to the code should be made in relation to:
 - its application to news aggregation services
 - the treatment of professional news content and paid and sponsored content
 - the weight given to news quality as a key aspect of the government's request to industry.
- ACMA is also concerned that the code does not place an obligation on individual signatories to have robust internal complaints processes. This was an area of particular concern identified in the Digital Platforms Inquiry.
- ACMA notes the lack of detail about the operations of the DIGI sub-committee that reviews the actions of the signatories and monitor how they are meeting their commitments under the code. No detail is provided in the code on how the sub-committee will operate, including how the independent members will be selected, or the circumstances which might lead a signatory's actions to be considered by the sub-committee. ACMA says there is also very little detail on enforcement mechanisms. ACMA considers that the inclusion in the code itself of a framework setting out principles for the structure and operation of the sub-committee would provide greater transparency and accountability.
- ACMA stated that a clear and transparent measurement framework is critical to the effectiveness of a voluntary, outcomes-based regulatory model. It identified a range of concerns with signatories' reports, including that they are heavily focused on platform outputs, and lack systematic data or key performance indicators (KPIs) that would establish a baseline and enable the tracking of platform and industry performance against code outcomes over time. Reports also show inconsistencies in the interpretations of key code terms and in reporting formats.

The ACMA report said it was still too early to draw concrete conclusions on the overall impact or effectiveness of the code, and recommended a number of actions by government to bolster industry self-regulatory arrangements:

- Continued monitoring is required and the ACMA recommends it provide government with another report on the code by the end of the 2022-23 financial year. This will provide sufficient time to assess the operation of the code administration framework and assess the impact of any changes arising from the current review of the code. As part of this report, the ACMA recommends it continues to undertake focused research on these issues.
- Initial signatory reports identify challenges in obtaining relevant data on platform actions in Australia. Providing the ACMA with formal information-gathering powers (including powers to make record-keeping rules) would incentivise greater platform transparency and improve access to Australia-specific data on the effectiveness of measures to address disinformation and misinformation. Information collected could also be used to identify systemic issues across the digital platform industry and inform future ACMA research.
- More formal regulatory options could be considered, particularly for platforms that choose not to participate in the code or reject the emerging consensus on the need to address disinformation and misinformation. ACMA recommended that government provides it with reserve regulatory powers in relation to digital platforms –such as code registration powers and the ability to set standards. This would provide the government with the option to act quickly to address potential harms if platform responses are not adequate or timely.
- There are also opportunities for improved collaboration between government agencies, platforms, researchers and non-government organisations on issues relating to disinformation and misinformation. ACMA recommends that the government should consider establishing a Misinformation and Disinformation Action Group to provide a mechanism to support future information sharing, cooperation and collaboration.

In its report, ACMA made five recommendations to the government:

Recommendation 1: The government should encourage DIGI to consider the findings in this report when reviewing the code in February 2022.

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 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.

Recommendation 5: 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.

4. Croakey Health Media responses to the review questions

Before we address the questions, we note that it is not clear whether any of our previous suggestions have been acted upon, and we hope the report from the review will answer these questions:

- Has DIGI reached out to public health organisations, such as the Public Health Association of Australia (PHAA), the National Aboriginal Community Controlled Health Organisation (NACCHO), the Australian Health Promotion Association (AHPA) and the Lowitja Institute for input into the code's operations, and with invitations to participate in reviewing frameworks, complaints etc? Despite misinformation and disinformation being a significant concern for public health, as acknowledged by the ACMA report, it seems there is little engagement of public health expertise in the code's operations.
- What measures has DIGI taken to ensure relevant health and community sector organisations and leaders are aware of the code, the review, and have had full opportunity to participate and contribute?

Review questions

Question 1: Should the code cover a broader scope of signatories?

Croakey Health Media believes the code should cover all digital platforms. We reiterate our previous recommendation that it be a mandatory, not a voluntary code. We note the ACMA's concerns that even when companies sign up to the code, it does not apply to all their products and services, and many people may not realise this. As discussed in Chapter 4 of ACMA's report, it is limited to those that deliver, to end users in Australia, user-generated content (including sponsored and shared content) and/or content that is returned and ranked by Search Engines in response to user queries. The code does not ordinarily apply to news content, private messaging services, email, or enterprise services. Private messaging platforms remain outside the scope of the code. As such, popular digital platform services like Facebook Messenger, WhatsApp and WeChat are not covered, despite growing concerns that these platforms are potential hotspots for misinformation. Smaller, encrypted private messaging, message board and alternative social media platforms like Signal, Telegram, 4chan, 8kun, Gab and Parler are also clear vectors for disinformation and misinformation content. These services promote themselves as bastions of free speech and have minimal or less restrictive content

moderation policies, attracting conspiratorial communities that may no longer be accepted on mainstream platforms. In particular, the use of Telegram and Signal in Australia has increased in recent months, largely driven by concern over WhatsApp policy changes and increased content moderation on other platforms.

Croakey Health Media notes the ACMA recommendations that signatories should be required to report annually on which services and products are covered by the code.

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

If there are to be optional aspects to the code, these should be on an opt-out basis with a clear explanation for why the company is opting out. Croakey Health Media notes ACMA's assessment that this approach would strengthen the operations of the code.

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

We agree with a revision and expansion of the definition of harm. We urge DIGI to consult with public health, First Nations health experts and representatives, and community leaders and community leaders around these definitions, noting the code's lack of detailed consideration of harms through a public health and health equity lens. Croakey Health Media asserts that any consideration of the impact should be defined broadly and explicitly include consideration of racism and hate speech.

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?

There should be wider consultation and discussion of these issues, including with community, public interest, public health and media representatives. Media regulation currently often fails to prevent the spread of misinformation and disinformation by media editorial and advertising channels. There should be harmonisation of regulation across media and digital platforms.

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

Croakey Health Media notes ACMA's view that there would be substantial public benefit in including messaging services within the scope of the code, with some caveats, given their role in spreading and amplifying misinformation.

Stakeholders have also expressed concern about the exclusion of private messaging services. In its submission to the draft code, the ABC noted the lack of clarity in this exclusion, given the lack of a definition. The Digital Media Research Centre at Queensland University of Technology suggested that private messaging be included given the significant amount of disinformation spread through instant messaging. The EC has also recently recommended the expansion of the EU Code to cover private messaging services. As private, closed and semi-public groups or pages on social media platforms are already included within the scope of user-generated content, the inclusion of one-to-many messaging services would support greater consistency across service types.

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

Croakey Health Media notes that current regulatory frameworks fail to prevent the dissemination of misinformation and disinformation as part of issues-based and political content in the media and across other platforms. Regulatory approaches across digital and other platforms should be harmonised. Again, we urge that there should be wider consultation and discussion of these issues, including with community, public interest, public health, First Nations and media representatives.

Question 7: Should the code define sponsored content?

Yes, absolutely.

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

It does not appear to be, given the ongoing prevalence of misinformation and disinformation, and the lack of clarity about the code's operations, and the lack of public awareness about the code.

Croakey Health Media notes ACMA's concern that relevant provisions in the code are weaker than those in the EU code, which state that signatories will use commercially reasonable efforts not to accept remuneration from, or otherwise promote accounts and websites that consistently misrepresent information about themselves. The EC's guidance on reforming the EU code seeks to strengthen these provisions. In particular, it states that platforms should commit to 'tighten eligibility requirements and content review processes for content monetisation and ad revenue share programmes on their services'.

ACMA also notes that many stakeholders have expressed the need for the code to address algorithmic transparency, and that several stakeholders have noted that there is inadequate recognition in the code of the importance of working closely with news industry bodies or news media.

In conclusion, to quote ACMA: “On the whole, reporting lacked systematic data, metrics or key performance indicators (KPIs) that establish a baseline and enable the tracking of platform and industry performance against code outcomes over time.”

And again from ACMA: “Disinformation poses an ongoing threat to Australia. In addition to bots and troll farms, a range of new technologies, underpinned by advancements in AI and machine learning, continue to evolve and provide new tools for bad actors to intentionally spread harmful falsehoods...There is an ongoing role for government in monitoring harmful disinformation and misinformation campaigns, as well as a broader coordination role in bringing together stakeholders on how to best respond to this content and protect Australians when online.”

In conclusion, Croakey Health Media believes that misinformation and disinformation are such profound, pervasive and growing public health concerns that governments must take far more wide-ranging action than simply leaving the matter to a voluntary, industry, self-regulatory code. Health departments and other areas of governments, public health experts, First Nations health and community representatives, the community sector and community leaders must also be involved in whole-of-government and whole-of-community responses.

Questions about this submission can be directed to Dr Melissa Sweet, Editor in Chief, Croakey Health Media. Thanks and acknowledgements to CHM members Jennifer Doggett, Laurell Grubb, Alison Barrett and Mitchell Ward for input into this submission.