ACMA submission to the 2022 review of the Australian Code of Practice on Misinformation and Disinformation

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Executive summary

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. Our regulatory remit also includes some aspects of online content regulation, for example, restrictions on gambling advertising during live streamed sport and interactive gambling services.

Since 2019, the ACMA has been involved in the development of the Australian Code of Practice on Disinformation and Misinformation. As part of our ongoing oversight role, we have developed a close working understanding of the code and continue to monitor the progress of the digital platform industry in addressing harmful content targeting Australians. This remains an area of focus for the ACMA and is one of our compliance priorities for FY 2022-23.

We welcome the commencement of the review but suggest that DIGI take the opportunity for a more comprehensive assessment of the code

DIGI's current review and consultation provides stakeholders with an important opportunity to reflect on how the code has been working, flag concerns, and propose changes to the code. We welcome this process, including the efforts of DIGI and signatories to respond to feedback from the ACMA as contained in its June 2021 oversight report.

However, we note that the scope of the review is relatively limited, and the proposed changes are light touch. While the discussion paper canvasses several important issues relating to the drafting of the code, a more holistic assessment, based on whether the code is meeting its original objectives, would provide a stronger footing from which the digital platform industry could take forward its efforts to combat mis- and disinformation.

While it is evident that signatories continue to take this issue seriously, there is limited evidence available that the code is influencing platform decision-making. In particular, many of the examples of platforms taking action against false and harmful content is for content that is not covered under the code. We attribute this to the code's narrow scope and its multiple product and content exemptions. This creates a complex and confusing framework for both signatories and users to navigate. It also raises questions around whether the code is sufficiently flexible to accommodate future or emerging harms or greater participation from across the digital platform industry. With these issues in mind, this review should seek to assess whether the broader code framework is working and if it remains fit-for-purpose.

Code governance and reporting should be in scope of the review

The review does not traverse code governance or reporting matters. While we recognise these arrangements have not been in-place for long, they are critical to the long-term success of the self-regulatory scheme. DIGI should use this review to invite early observations and reflect on any initial learnings from administering the code.

Based on the ACMA's review of the latest round of signatory transparency reports, further improvement is needed on the code's monitoring and reporting framework. Signatories need to more clearly explain how the measures they have implemented are resulting in a reduction in harm, and where relevant, should nominate what internal metrics or KPIs they are using to track progress and improvements over time. These requirements may need to be codified in future iterations of the code.

Signatories should also be doing more to explain their internal user reporting and complaints processes, and how these inform content moderation decisions regarding mis- and disinformation. This remains a broad information gap and is an area that the ACMA will be continuing to focus on.

DIGI should closely consider recent international developments

This code remains an important voluntary initiative of the digital platform industry in Australia. However, there are relevant and closely related international developments that could usefully inform this review. DIGI should closely consider these, including the recent release of the [Strengthened Code of Practice on Disinformation](#) and the passage of the [Digital Services Act](#) in the European Union. These are highly relevant to the issues at hand and could help guide or address some of the outstanding matters relating to the current code.

The ACMA recognises the continued efforts of DIGI and the digital platform industry to provide a self-regulatory code that can deliver positive and substantive outcomes and protections for Australian users. However, if the industry does not succeed in implementing a fully effective self-regulatory scheme that delivers adequate, positive and enduring protections to Australian users, then further government intervention may be necessary.

With this in mind, the ACMA makes the following observations:

Overview of key ACMA views

Response to DIGI's proposed amendments

> The ACMA supports amendments that would require signatories to specify which products and services are covered under the code (Proposal 1). We also continue to encourage DIGI to move to an 'opt-out' framework in order to enhance confidence in the code.

> The ACMA supports DIGI's proposal to clarify that an accumulation of harms may result in a persistent threat to democratic institutions or public goods (Proposal 2). We also strongly encourage DIGI to remove the 'imminent harm' threshold under the code to reflect the full range of harms that can be caused by mis- and disinformation, noting the Code envisages the possibility of a broad range of responses, to be used proportionate to the level of harm.

> The ACMA considers the news content exemption is unnecessary and should be removed. If the exemption is retained but limited to professional outlets (Proposal 3), further amendments to the drafting are required to close potential loopholes for bad actors and less reputable news sources.

> The ACMA supports DIGI's proposal to bring news aggregation services under the scope of the code (Proposal 4). DIGI should, however, consider whether further amendments to this provision are required in order to both provide greater certainty to existing signatories and enable broader participation.

> The ACMA does not support DIGI's proposal to continue excluding all private messaging products and services under the code (Proposal 5). We consider the code should instead be expanded to cover the propagation of mis- and disinformation on messaging services that facilitate large-scale group messaging.

> The ACMA supports the intent behind DIGI's proposal to clarify the scope of the political advertisement exemption (Proposal 6). However, further redrafting may be required to better address the issue of political advocacy. As part of this review, DIGI should also give consideration as to how this exemption interacts with optional code commitments regarding improving transparency of the source of political advertising.

> The ACMA supports the inclusion of a sponsored content definition in the code (Proposal 7). However, we consider this definition should be expanded to also include digital platforms other than social media services.

Additional and broader issues

> As part of this review, the ACMA encourages DIGI to consider broadening the scope of the code to enable participation from across a greater diversity of platforms.

> While the ACMA welcomes the development of more detailed governance arrangements, DIGI needs to further strengthen its code oversight and reporting processes. This includes providing greater transparency around the operation of the sub-committees and reporting on signatory non-compliance.

> The ACMA encourages DIGI to develop and publish its processes for amending the code.

> The ACMA considers that, as a priority, additional work needs to be undertaken to further embed a robust reporting framework in the code. This should be informed by the independent reviewer observations and the ACMA's feedback on the current reporting processes.

> The ACMA considers that further enhancements to the reporting framework may require specific code obligations to drive the developments of KPIs. DIGI should draw upon European experiences to inform the development of a KPI framework.

> DIGI may wish to reconsider and clarify the purpose of the transparency reports as the code matures. Given the limited use of the reports by signatories to raise awareness of their activities, DIGI should consider whether the reports are the best mechanism to promote measures under the code.

> DIGI should consider the merits of a differentiated reporting framework that allows different types of reporting for larger and smaller signatories. This may encourage greater participation in the code.

> The code and associated reporting framework currently provide minimal transparency about user reporting and complaints processes. The ACMA considers that this is an area that needs to be addressed.

> The ACMA considers that DIGI should seek views from stakeholders (including through this review) about the effectiveness and awareness of its complaints facility.

In conclusion, the ACMA strongly encourages DIGI to address the issues raised in our 2021 oversight report and this submission to bolster the current self-regulatory code of practice and associated processes and practices. The ACMA will continue to oversee the operation of the code and will provide ongoing reporting to government on its effectiveness. This reporting will inform government consideration as to whether the current self-regulatory approach is delivering for Australian users of digital platforms or if alternative approaches may be necessary.

Background

The [Australian Code of Practice on Disinformation and Misinformation](#) is a voluntary initiative of the digital platform industry in Australia that aims to reduce the risk of online misinformation causing harm to Australian users. It was developed and launched by the Digital Industry Group Inc. (DIGI) in February 2021, and currently has 8 signatories: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok and Twitter.

As is required under the code, DIGI has recently commenced its initial code review, and has published a [2022 Review Discussion Paper](#) to inform public consultation. This submission outlines the ACMA's views in response to DIGI's specific questions and proposed changes to the code and our broader observations about how the code is operating.

ACMA's oversight and reporting role

The ACMA has a close working knowledge of the code, helping to drive its development since its original inception in late 2019. The ACMA has been tasked with overseeing the code development process and reporting back on whether the voluntary steps taken by digital platforms were sufficient to address the emerging harms from disinformation in Australia.

Over this time, we regularly engaged with DIGI and potential signatories. In June 2020, we published a [position paper](#) that provided advice to industry on models of effective self-regulation and set out our expectations for the code. We also provided feedback on early drafts of the code and undertook independent research to better understand the impacts of online mis- and disinformation in Australia.

After the release of the code, we undertook a detailed assessment of the code development process, the provisions of the code, and the initial performance of signatories. Our [report on the adequacy of digital platforms' disinformation and news quality measures](#) (oversight report) was provided to government in June 2021 and published in March 2022. This report made several findings about how industry could seek to strengthen or improve the code over time and recommended that DIGI carefully consider these findings when undertaking its initial code review.

The oversight report also recommended that the ACMA be provided with information-gathering and reserve code-making regulatory powers to incentivise compliance and provide a mechanism for stronger regulatory action should the voluntary code fail to achieve its stated outcomes. These recommendations remain under consideration by government and are therefore outside of the scope of the current review process.

Separately, the ACMA has been continuing to oversee the operation of the code, and we recently identified 'combating misinformation and disinformation on digital platforms' as one of our key [compliance priorities for 2022-23](#). As part of this upcoming work, we will be continuing to focus on signatory reporting, more closely examining the processes for user flagging and complaints, and encouraging greater take-up of the code across industry. We will also be monitoring DIGI's current review and will pay careful attention to how this paper and other public submissions inform code changes.

Scope of the review

The scope of DIGI's review is outlined in its 2022 Review Discussion Paper. This paper seeks stakeholder feedback on 8 specific questions, and 7 related proposals to amend the code.

We note that all but one of these questions directly corresponds to a finding made by the ACMA in its oversight report. While we welcome DIGI's genuine engagement with our report, we are concerned that it has only focused on a handful of findings, primarily those that relate to the scope of the code. DIGI's proposed amendments are minor, seeking a small number of drafting changes, including clarification notes to address outstanding concerns. DIGI does not appear to be contemplating any wholesale changes to the code and is not seeking to examine the operation or effectiveness of the broader code framework in addressing risks to users from mis- and disinformation.

In our oversight report, we noted that the building blocks for effective self-regulation were not yet in place. In the 12 months since our last examination of the code, DIGI has made several improvements to strengthen the broader regulatory framework underpinning its operation. These include:

> establishing a public complaints facility for hearing, investigating and resolving 'material' or systemic breaches to the code

> establishing broad governance arrangements including a signatory steering group, administrative sub-committee, complaints sub-committee, and independent review process

> developing and publishing best practice reporting guidelines to drive improvements and consistency in reporting

> commissioning research to better understand perceptions of misinformation among Australian users of digital platforms.

DIGI has reported on these operational developments in its recently published annual code administration report, which also included new consumer research. Additionally, in May 2022, signatories released their second annual transparency reports under the code, providing new insights into their activities under the code, based on the new reporting guidelines.

Not including the code's governance arrangements and reporting mechanisms within the scope of its current code review is a missed opportunity. DIGI argues that these arrangements have not been established for sufficient time to determine whether changes are required and notes that they will be examined as part of its next regularly scheduled code review in 2024. We note this is a significant limitation of the current review, and consider stakeholders should have been provided with an opportunity to comment on the entire framework.

Noting it has been 12 months since our last examination of the code, and 24 months since our position paper, this submission seeks to both update and further clarify the ACMA's views on areas for continued focus and improvement. As we were not previously able to assess the governance framework, reporting guidelines and complaints facility, we have also chosen to provide views on these aspects of the code, where relevant.

Structure of this submission

Noting the ACMA's intent for this submission is to serve as an update to our oversight report, we have split this discussion into two sections:

> Section 1 directly responds to DIGI's consultation questions and proposed changes, focusing on matters related to the scope and membership of the code. It provides our updated views on the ways in which the text of these provisions may be improved or strengthened through amendments.

> Section 2 provides additional ACMA commentary on outstanding issues or concerns that are not currently under consideration for this review, including code governance, complaints and reporting frameworks.

We thank DIGI for the opportunity to provide this submission, and we would welcome further engagement on these issues over the coming months as industry considers potential changes to the code.

Section 1: Proposals to amend the code

This section provides ACMA views on DIGI's proposals to amend the code to address outstanding concerns about its scope. Rather than follow the order of the consultation questions, this section has been structured thematically around the topics of 'covered products & services', 'covered content', 'content exemptions' and 'other issues'.

Covered products & services

Existing issues of scope

This review provides an opportunity for DIGI to reassess and redefine which products and services are intended to be covered under the code, to better reflect the commitments of current and potential future signatories.

At present, the scope of the code is limited to search engines and platforms that host user-generated content. This has created inconsistencies within the code framework, as some of the existing products and services provided by signatories appear not to be within its scope.

Apple, for example, signed up to the code shortly after its launch, committing to implement measures that reduce the risk of harms that may arise from the propagation of mis- and disinformation on its Apple News service. While this was a welcome development, the ACMA subsequently raised concerns in its oversight report that the scope of the code seemed to exclude news aggregation services, like Apple News.[1]

DIGI is proposing to address this inconsistency through the inclusion of an explicit news aggregation category in the scope of the code. While the ACMA supports this change in-principle, we are concerned it will further complicate the code's already difficult-to-navigate framework of inclusions and exemptions. This amendment also does not fully address our concerns about the code's current applicability to products and services provided by existing signatories. Like the Apple News service, Adobe's program of work on content provenance and authenticity does not fit easily within the current framework of the code, and DIGI's proposal would not resolve this issue.

Noting these challenges, the code may be improved by moving towards a less prescriptive and more flexible model, under which a greater diversity of products and services could be considered in-scope. Removing restrictions on participation would serve to better future-proof the code and signal to the government that industry is committed to monitoring for, and responding to, mis- and disinformation, wherever it appears.

The European Union's Strengthened Code of Practice on Disinformation could be seen as model in this regard. Released earlier this year, it has attracted a greatly expanded range of signatories compared to its 2018 iteration, including online platforms, advertising organisations, fact-checkers, and a range of other NGOs committed to fighting disinformation. While we do not suggest the Australian code needs to be expanded to cover organisations outside of the digital industry, DIGI should nevertheless consider how the code could evolve over time, and what changes

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[1] ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, p. 55.

may be required should there be new services, platforms or technology companies that wish to join the initiative in the future, without weakening the existing framework.

> *The ACMA supports DIGI's proposal to bring news aggregation services under the scope of the code (Proposal 4). DIGI should, however, consider whether further amendments to this provision are required in order to both provide greater certainty to existing signatories and enable broader participation.*

Excluded products and services (messaging services)

The code currently has 3 categories of excluded products and services: private messaging, email, and enterprise services. Of these, DIGI has specifically sought public comment on whether the scope of the code should be extended to include private messaging products and services.

The ACMA agrees with DIGI that personal 1-to-1 communications or small-scale private group messages should remain out of the scope of the code.

However, consistent with both our position paper and oversight report,[2] the ACMA continues to call for the code to be amended to cover harmful mis- and disinformation spread via public or 'semi-public' group messaging services. This is on the basis that – unlike truly private communications – large-scale unmoderated group messaging services can take on a broadcast-like function and be used to distribute harmful material to a wide and disparate audience.

Telegram, for example, allows for 'supergroups' of up to 200,000 users. Yet even on services that limit a group's size to hundreds – not thousands – of users, the sharing of misinformation continues to be a significant concern.[3] And despite being largely unmoderated and lacking any indicators to help users determine the quality or reputability of information, these messaging services continue to be a source of news for many of their Australian users.[4]

We disagree with the view expressed by DIGI that this would entail intrusive surveillance, monitoring or controlling of private communications by digital platforms, or that the expansion of the voluntary code would somehow grant the government new powers over messaging services. As previously noted, platforms already implement a range of measures to mitigate risks of harm on their messaging services in a way that does not undermine technical encryption or user privacy, such as the introduction of 'friction' that limits the speed or reach of forwarded messages or shared links.

We further note that messaging services and apps are now caught under the strengthened EU disinformation code. This requires relevant signatories to develop and report on available tools and features that help users identify disinformation and limit their viral propagation on their messaging services.[5] As a signatory to the EU Code, Meta has committed to these measures for its WhatsApp and Messenger services.

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[2] ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, p. 54.

[3] Khan, S. and Ramachandran, V. (2021), Millions depend on private messaging apps to keep in touch. They're ripe with misinformation, *PBS News Hour*, 5 November.

[4] According to the 2022 Digital News Report, a large proportion of Australians who use these messaging services rely on them as a news source (54% of Telegram users, 40% of WeChat users, 25% of WhatsApp users and 22% of Facebook Messenger users); Park, S., et al. (2022), Digital News Report: Australia 2022, News & Media Research Centre, University of Canberra, p. 85.

[5] See Measures 25.1 and 25.2, The Strengthened Code of Practice on Disinformation 2022.

> *The ACMA does not support DIGI's proposal to continue excluding all private messaging products and services under the code (Proposal 5). We consider the code should instead be expanded to cover the propagation of mis- and disinformation on messaging services that facilitate large-scale group messaging.*

Covered content

In addition to placing limits around the specific products and services (thereby determining which organisations can and cannot participate), the code also defines what types of content will constitute 'disinformation' or 'misinformation' based on an assessment of harm, which is then applied across the code framework. This has the effect of establishing a high threshold that must first be met before signatories are required to implement measures under the code.

While we appreciate the necessity to be clear about definitions and the scope of content to be covered the code, the way the code has been drafted with respect to covered content serves to limit the code's general applicability. It places too much emphasis on individual content moderation decisions – particularly relating to content removal – as opposed to broader platform-wide systems and processes that can collectively work to help combat the spread of mis- and disinformation online.

As previously noted in both our position paper and our oversight report, we consider the code should provide flexibility for signatories to implement a wide variety of measures, unique and appropriate to each platform, in order to address harms from the propagation of disinformation or misinformation. This is the intent behind an outcomes-based model of regulation.

By adopting the principle of proportionality (as described in the preamble and expanded upon in 6.1 of the code), the code seeks to allow signatories to recognise and promote the full range of graduated systems, policies and tools they have adopted in response to the threat of mis- and disinformation – from lighter-touch initiatives around media literacy and the promotion of reputable sources, to stronger enforcement activities like content removal and user bans.

In practice, however, due to the code's narrow definitions and the complexity of applying its various content exemptions, the code is much more likely to capture measures at the higher end of a proportional scale. This makes it difficult to know whether or not an action taken by a signatory is a result of its commitments under the code, or the extent to which the code has any bearing on the decisions of a signatory whatsoever. As discussed below, there have been several recent examples of signatories undertaking moderation activities for content that is excluded under the scope of the code, including in relation to news content and political advertising. This leads us to conclude that the code as currently drafted isn't reflective of the actual moderation practices of signatories, let alone having the desired effect of obligating signatories to improve their performance in addressing mis- and disinformation.

This issue is broader than the targeted questions raised by DIGI in its consultation paper, going to the operation and enforceability of the code framework more generally. While the ACMA would encourage DIGI to undertake a broad and wide-ranging review when examining potential changes to the scope of covered content, we have also provided specific comments on the proposed treatment of the harm threshold below.

Serious and imminent harm

In our oversight report, the ACMA expressed the view that the threshold of harm adopted under the code was too narrowly constructed and subjective.[6] We noted the inclusion of an 'imminence' test was particularly difficult to apply in practice, and also failed to recognise the longer-term impacts or 'chronic' harms that may result from widespread misinformation narratives. As such, we advocated for its removal from the definitions of disinformation and misinformation under a revised code.

In its discussion paper, DIGI has broadly rejected this finding, citing the difficulty in platforms foreseeing harms that may not eventuate for years to come. DIGI instead proposes to retain the existing language but include a note stating that the serious and imminent threshold can include situations where an accumulation of harms creates persistent serious and imminent threats.

While we acknowledge the intent behind this clarifying note, DIGI's proposal does not sufficiently engage with, or address, our ongoing concerns about the practical challenges of applying this narrow threshold.

The ACMA acknowledges that it can be very difficult to know what longer-term harms may eventuate from the propagation of false content. Equally, however, we do not consider it appropriate that platforms simply adopt a 'wait and see' approach to potentially harmful false content that has been identified but does not reach the requisite threshold. While platforms should not be expected to police all online falsehoods, they should be investing in systems and tools to pro-actively identify concerning narratives, trends or behaviours before they cause serious real-world harms, particularly on important matters such as public heath, trust in democratic institutions and misrepresentation of scientific facts.

The ACMA understands that platforms already employ comprehensive monitoring programs to identify current and emerging harms, which can result in a range of preventative steps to help reduce the amplification of harmful content. Over the past 12 months, platforms have been proactive in updating their policies and addressing falsehoods about vaccine safety, electoral misinformation and climate change, despite some of this content likely not satisfying the 'serious and imminent' threshold.

It is not only appropriate but also critical for a well-functioning democracy that platforms require content meet a high threshold of potential harm before taking action that could impede on a user's speech. As such, while we are advocating for the removal of the 'imminent' aspect of the test, we continue to support the notion that potential harms must be 'serious' before signatories contemplate removing content or banning users under the code.

However, as discussed above, there are already a range of other measures taken by platforms to help mitigate these risks – including steps to reduce amplification or to raise up authoritative voices – which may not require such a high threshold. The ACMA would therefore encourage DIGI to revisit how the code's existing definitions could be amended to better reflect the full range of graduated measures, and to consider whether industry-wide frameworks or further guidance materials around the criteria for assessing harm are required.

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[6] ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, p. 53.

> *The ACMA supports DIGI's proposal to clarify that an accumulation of harms may result in a persistent threat to democratic institutions or public goods (Proposal 2). We also strongly encourage DIGI to remove the 'imminent harm' threshold under the code to reflect the full range of harms that can be caused by mis- and disinformation, noting the code envisages the possibility of a broad range of responses to be used proportionate to the level of harm.*

Content exemptions

In addition to its targeted definitions of 'disinformation' and 'misinformation', the code also contains several carve outs for different categories of content. This includes content produced in good faith for entertainment or education purposes, content that has been authorised by an Australian State or Federal Government, political advertising, and professional news content.

While many of these content exemptions are reasonable, we remain concerned that their inclusion (together with exceptions to exemptions) adds an additional layer of complexity for industry and users to navigate and fails to reflect the reality of how platforms actually treat this type of infringing content on their respective services.[7]

As part of its considerations around the definitions and broader code framework, DIGI may wish to explore whether the code can be simplified in a way that avoids the need to exempt different types of content. Signatories could instead rely on the principle of proportionality to determine what measures, if any, are appropriate for addressing mis- and disinformation in these types of content, based on an internal assessment of risk. Should these exemptions remain, however, we have provided some views on these issues below, guided by DIGI's consultation questions.

Professional news content

Accuracy in professional news content is a longstanding regulatory safeguard and core expectation of Australian audiences.[8] According to research from both DIGI and the ACMA,[9] professional news content plays a very important role in the information ecosystem. Most of the news that Australians consume on social media is sourced from traditional media outlets. However, Australians remain concerned about misinformation on digital platforms and report being regularly exposed to it online.[10]

At present, except in clear cases of disinformation, the code excludes news content that is the subject of a published editorial code. DIGI is proposing to retain this news exemption but limit it to content produced by professional news outlets. This is on the basis that signatories should not be responsible for moderating content that is already subject to accuracy provisions in other industry codes of practice.

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[7] For example, professional news content is carved out of the code unless it is considered clearly fall within the definition of disinformation. As outlined in this submission, platforms have taken action against misinformation in news content over the last 12 months.

[8] See, for discussion, ACMA (2022), What audiences want – Audience expectations for content safeguards: A position paper for professional content providers.

[9] See, DIGI (2022), Australian Code of Practice on Disinformation and Misinformation | Annual Report, ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures

[10] DIGI (2022), Australian Code of Practice on Disinformation and Misinformation | Annual Report

We accept that news content should be treated distinctly under the code. However, we do not agree that the existence of other industry codes absolve platforms of any responsibility to address seriously harmful news content posted on their services. This position is consistent with the view taken by the European Commission when rejecting calls to include a media exemption under the Digital Services Act.[11] On balance, the Commission argued that a media exemption would create a loophole for disinformation agents and bad actors to exploit.

It is also worth noting that in Australia, despite news content being exempted, several signatories have taken steps over the past 12 months to remove news content from their services due to mis- and disinformation concerns. Most notably, in August 2021, YouTube suspended Sky News' account for one week due to what it classified as repeated breaches of its COVID-19 misinformation policy. Various signatories also moved quickly earlier this year to respond to the threat of disinformation from Russian state-affiliated media, implementing measures ranging from labelling to outright bans. While some of these actions were the result of sanctions, most platform activity was self-initiated and based on an internal assessment of risk to their users.

DIGI may argue that the code represents a common baseline and that signatories are free to adopt policies and measures that exceed these minimum requirements. Despite this, our position remains that the code should include expectations that platforms address mis- and dis-information wherever it appears, while acknowledging that a proportional and flexible response is appropriate depending on the nature of the material and the nature of the platform's service. This should include measures to address mis- and disinformation in professional news content.

However, should DIGI choose to retain the news content exemption, there is a need to further clarify who it intends to be covered by the exemption and the basis for the exemption. While DIGI's proposed amendments seek to provide this clarification, the current drafting is likely to raise further issues for signatories and the public.

The 'professional standards' test in the mandatory news media bargaining code is one the criteria that the ACMA must assess when determining the eligibility of news businesses to participate in the scheme. DIGI has modelled its proposed definition of a 'news source' on this test but has made several changes that fundamentally weaken the criteria.

Under the news media bargaining code, a news source must show that it is subject to both established editorial guidelines *and* have editorial independence from the subjects of its news coverage. Editorial independence alone is not sufficient, as this could capture any number of bloggers, citizen-journalists and other low quality or non-reputable "news" websites.

It is also notable that DIGI has chosen to remove the requirement that any internal editorial standards must contain 'analogous rules' to that of existing Australian industry codes. Without this point of comparison, an organisation may claim to have editorial standards, but these may either not exist or offer the same kinds of protections to Australian users, such as avenues for reporting and complaints, or commitment around the accuracy or quality of news information.

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[11] Brussels, Paris split with press publishers over exemptions in online content rules – POLITICO

This is particularly concerning when considering international sources of news, which may come from countries that do not offer press freedoms, or countries with dramatically different regulatory traditions regarding truth or accuracy in the media. As we have seen with Russian state-sponsored media over the last 6 months, media outlets can become tools for disinformation agents, and it is not clear how signatories would practically assess whether content from an unknown news source should be exempted. Given this, it may be preferable for DIGI to limit the professional news exemption to Australian media organisations subject to known regulatory instruments or organisations with internal standards that are analogous to these instruments.

Finally, noting the important role played by both digital platforms and media outlets in combatting mis- and disinformation across the information ecosystem, DIGI should consider how this code can support better coordination between these relevant organisations. This could include establishing reporting or referral pathways, so that a platform user who complains about mis- or disinformation in news content is provided information on where and how to make a complaint with the original publisher.

The ACMA considers the news content exemption is unnecessary and should be removed. If the exemption is retained but limited to professional outlets (Proposal 3), further amendments to the drafting are required to close potential loopholes for bad actors and less reputable news sources.

Political and issues-based advertising

As stated in our oversight report, the ACMA continues to support the exclusion of political advertising from the scope of the code on the grounds that this material is important to democratic processes and is better addressed through electoral law obligations.[12] The ACMA also agrees with DIGI that the code should not pre-empt the decisions of state or federal governments regarding truth in political advertising laws.

However, as with professional news content, the current provisions and definitions in the code are confusing and difficult to interpret. This is particularly the case when considering the potential scope of paid advertisements that 'advocate for the outcome of a political campaign concerning a social issue of public concern in Australia'. We therefore welcome DIGI's efforts to provide further clarification on the intersection between issue-based and political advertising. DIGI's proposals would clarify that general advocacy on social issues, not associated with a clear proposal by a parliament for policy change via a democratic process, is not intended to be caught by this content exemption and would therefore be subject to the obligations under the code, in particular, Objective 1.

We agree that these provisions should be read narrowly. However, we still have concerns that it is a difficult and somewhat arbitrary line, as the majority of ads containing 'general' political advocacy are likely to relate back to a 'political campaign' of some description. For example, it isn't clear to us whether an ad containing climate misinformation, posted by an industry association in the context of an upcoming election, would be caught under the code or excluded under this exemption. It may therefore be preferable to consider aligning these provisions to the legislative definition of an 'electoral matter'.[13] This would exempt ads whose 'dominant purpose' is to 'influence the way electors vote in an election'. Communication of electoral matters

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[12] ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, p. 56.

[13] s. 4AA, *Commonwealth Electoral Act 1918*.

also requires authorisations,[14] which could help make this assessment clearer for platforms, at least in the context of federal elections.

We note that despite the exemption under the code, signatories have nevertheless taken down political ads in Australia over the last 12 months. This has included:

> YouTube removing 12 paid videos from the United Australia Party in late 2021[15]

> Meta and YouTube removing political ads in April 2022 from both the Australian Labor Party and the Liberal Party of Australia for policy violations during the recent Federal election campaign.[16]

It is likely that these activities relate to breaches of each platforms' misinformation policies, both with respect to COVID-19 and elections. However, neither Google nor Meta has provided information in their respective ad transparency libraries on the content of these removed political ads or even what policy violation has occurred. This is an issue that should be addressed through changes to their policies.

Finally, the ACMA also remains concerned about how the exemption of political advertising in the code interacts with the opt-in objective around improving transparency of the source of political advertising (Objective 5). The drafting across these provisions is confusing and could appear contradictory to some readers. As we noted in our oversight report, signatories like Meta already include 'issues-based' advertising within the scope of their existing ad libraries, which is at odds with the scope and definition of political advertising under the code.[17] We would encourage DIGI to ensure that, in any revised drafting, both political advertising and issues-based advertising come within the scope of the transparency obligations in Objective 5.

The ACMA supports the intent behind DIGI's proposal to clarify the scope of the political advertisement exemption (Proposal 6). However, further redrafting may be required to better address the issue of political advocacy. As part of this review, DIGI should also give consideration as to how this exemption interacts with optional code commitments regarding improving transparency of the source of political advertising.

Other issues

Opt-in versus opt-out

In the ACMA's oversight report, we argued that the code could be strengthened by moving from an 'opt-in' to an 'opt-out' model. Under this proposal, all signatories would be expected to adhere to the full suite of code commitments unless they were able to provide strong justification as to why a particular outcome was not achievable, suitable, or of broad relevance to their business.

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[14] s. 321D, *Commonwealth Electoral Act 1918.*

[15] Most of United Australia party's videos pulled from YouTube for allegedly violating advertising policy | United Australia party | The Guardian

[16] See, for examples: Ad Library (facebook.com), Ad details (google.com).

[17] ACMA (2021), A report to government on the adequacy of digital platforms' disinformation and news quality measures, p. 57.

Having observed the operation of the code over the past 16 months, we remain of the view that the current 2-tier model of having both 'mandatory' and 'voluntary' outcomes unnecessarily complicates the code, while also creating an impression that some commitments are inherently more important than others. This impression is further strengthened through the operation of DIGI's complaints facility. Eligible complaints concerning mandatory outcomes are considered a 'material breach' of the code and are required to be promptly investigated and resolved by the complaints sub-committee. By contrast, an eligible complaint about one of the voluntary outcomes is simply recorded on a database, to be reviewed collectively at 6-month intervals or more frequently if required for evidence of systemic issues.

We understand that DIGI does not share the ACMA's concerns on this matter, stating the opt-in model is working well, as evidenced by 5 of the 8 signatories having signed up to all code commitments. DIGI further notes that the flexibility provided via the opt-in model was critical in securing the involvement of the remaining 3 code signatories, suggesting some platforms could choose to withdraw from the code if the framework was to be amended.

In response to ACMA feedback, DIGI is proposing to retain the opt-in model, but amend the code to require that signatories:

> include a list of the products and services captured under the code as part of their annual reports

> annually re-assess their code commitments and update their opt-in nominations forms, which would be published by DIGI on its website.

Although these amendments do not directly address our concerns about the current opt-in framework, the ACMA is supportive of the intent behind DIGI's proposal, as it would help to improve public transparency over signatory commitments and enable readers to more easily monitor and track changes to code commitments over time. The ACMA considers that the Code should include a clear expectation that signatories should opt-in to all outcomes that are relevant to any produce or service offered by the platform.

The ACMA observes that this proposal does not address the situation where a signatory has changed its obligations or withdrawn from the code mid-cycle. Under these circumstances, there should be new code obligations on signatories to notify DIGI as the code administrator and DIGI to update its website and notify relevant stakeholders within a certain period of time.

Alternatively, DIGI could consider maintaining a register on its website, recording the code signatories, their covered products and services, and which of the outcomes or commitments they have signed up to under the code. This would serve as a clear, single source of truth for the public, and would enable signatories to report any changes to code commitments to DIGI throughout the year, rather than waiting until the annual reporting cycle.

> *The ACMA supports amendments that would require signatories to specify which products and services are covered under the code (Proposal 1). We also continue to encourage DIGI to move to an 'opt-out' framework in order to enhance confidence in the code.*

Opportunities for new signatories

We note that DIGI is interested in views on whether additional providers of online services should become signatories to the code, and whether the ACMA should play a role in identifying these services.

Given the voluntary nature of the Code, the primary responsibility falls to DIGI and code signatories to scan for new harms across emerging and established digital platforms, and to take pro-active steps to encourage eligible non-signatories to participate in the code.

That said, while the code continues to enjoy broad membership across some of the largest and most popular digital platforms in use within Australia, the ACMA would strongly support renewed efforts by industry to further encourage participation among other high-use or high-risk platforms.

Over the past 12 months, we have continued to monitor key developments, public announcements and user concerns arising from the spread of potentially harmful dis- and misinformation. This has helped to highlight that the issue of false, harmful online content is not limited to current code signatories, but rather is a problem that extends across the broader online information environment.

Of particular interest, a number of large non-signatory platforms have made policy changes in response to mis- and disinformation issues arising on their respective services. Some recent high-profile developments involving non-signatories include:

> In August 2021, Snapchat published an overview of the measures it takes to prevent the spread of misinformation on its service, including its vetting process for media publishers and content creators.

> In September 2021,135 communities on Reddit held an online protest over the service's failure to tackle systemic COVID-19 and vaccine misinformation. This community response saw Reddit ban or quarantine several subreddits and update its community guidelines to clarify its prohibition on posting misleading or manipulated health information.

> In December 2021, 270 medical professionals published an open letter criticising Spotify's *The Joe Rogan Experience* podcast for spreading 'false and societally harmful asserts' about COVID-19 and vaccines. This resulted in Spotify publishing its previously internal content moderation polices and committing to provide increased transparency regarding its approaches to mis- and disinformation.

> In February 2022, Discord updated its community guidelines to disallow forms of misinformation that is 'likely to cause physical or societal harm — including content that could result in damage to physical infrastructure, injury to others, the obstruction of participation in civic processes, or that could endanger the public health'.

> In March 2022, Twitch updated its misinformation actors' policy and announced it would block 'harmful misinformation superspreaders who persistently share misinformation on or off of Twitch'. Twitch has also recently signed up to the EU Strengthened Code of Practice on Disinformation.

> In April 2022, Pinterest announced a global ban on climate misinformation, adding to its existing bans on content containing medically unsupported health claims, conspiracy theories that undermine civic participation, and misinformation that encourages turning individuals, groups, places or organisations into targets of harassment or physical violence.

As each of these platforms have measures to address dis- and misinformation on their respective services, which apply to Australian users, it would be appropriate for DIGI to consider ways to incentivise participation from these or similar platforms under a revised code. The involvement of these platforms in the Australian code would provide improved public transparency over their respective measures and further demonstrate the commitment and maturity of the digital platform industry in Australia to voluntarily and collectively address this important issue.

From its discussions with some of the above non-signatory platforms, the ACMA understands that the code's reporting obligations are seen as onerous and a key disincentive to participation. This review provides an opportunity for DIGI to better understand industry concerns on these issues, and to consider whether any of its proposed reforms or code amendments could help to incentivise other platforms to sign-up to the code. However, appealing to new signatories should not be the driving force behind code reform, and DIGI should only entertain changes that do not lessen the strength or efficacy of existing code obligations.

In our oversight report, we recommended a suite of reserve powers to be legislated to enable the ACMA to make codes and standards if voluntary efforts prove inadequate. The powers could allow the ACMA to make codes to encompass platforms that do not voluntarily participate in the industry self-regulatory scheme.

As part of this review, the ACMA encourages DIGI to consider broadening the scope of the code to enable participation from across a greater diversity of platforms.

Sponsored content

We welcome DIGI's proposal for a definition of sponsored content to be included in the code. As sponsored content becomes more prevalent, it is important that users know the reasons why they are seeing or being targeted by a post that has been paid for. Further, as the code acknowledges, where a platform is benefiting financially from the content this is a relevant factor in a consideration of the proportionate measures the platform should take to monitor for and respond to mis- or disinformation.

We are concerned, however, that the proposed definition is limited to only include sponsored content on social media services, and does not envisage extending this out to sponsored content on search engines, news aggregators, or other categories of products and services that could be included under a revised code. There appears to be no particular logic to the definition as proposed and, in our view, it should be expanded to cover any content where a platform receives a benefit for promoting or otherwise enhancing the visibility of that content.

On a related issue, the ACMA is also mindful of the growing threat posed by disinformation campaigns that target and use influencers to amplify harmful false content. We have seen this scenario play out recently in the context of the Russian invasion of Ukraine, with popular Russian TikTok users being offered payment from state-affiliated actors to spread pro-Kremlin narratives on the platform.[18] While this differs from the kinds of paid or sponsored arrangements that are contemplated under the code, signatories should be live to, and the code should be responsive to, these risks.

The ACMA supports the inclusion of a sponsored content definition in the code (Proposal 7). However, we consider this definition should be expanded to also include digital platforms other than social media services.

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[18] Gilbert, D. (2022), Russian TikTok Influencers Are Being Paid to Spread Kremlin Propaganda, *Vice*, 22 March.

Section 2: Code governance and reporting

Code governance and reporting are both essential to a successful self-regulatory scheme. To assist DIGI and signatories further strengthen self-regulatory arrangements, the ACMA has provided some additional commentary on outstanding issues or concerns that have not been flagged for consideration under this review.

Code governance

In our oversight report we noted that, despite the code including a high-level administration framework, the more detailed governance arrangements that were needed to support and underpin the operation of the code were still under development. This served as a broad constraint on our ability to assess the practical effectiveness of the code.[19]

In October 2021, DIGI announced its code governance framework, which included a complaints subcommittee, an independent review process for transparency reports, an administration subcommittee and a steering group subcommittee. As these arrangements have not been in place for a full 12 months, DIGI is proposing to exclude them from this review but has committed to examine code governance as part of its next scheduled review in 2024. Whilst we appreciate time is required to fully understand how these arrangements are operating, we nevertheless consider that DIGI should reflect on its preliminary learnings and assess whether any further code amendments to the governance framework are required as part of the current review.

Code oversight processes

While acknowledging that the governance arrangements are still relatively new, the ACMA considers that further work is required to ensure robust procedures are in place to administer the code.

We welcome DIGI's initiative to publish an annual report on the administration of the code. In future reports, we would encourage DIGI to provide further detail on the operation of governance arrangements. This could include more detailed descriptions of the role of the sub-committees and their activities over the year.

In our oversight report, the ACMA raised concerns about the timeliness of announcing new signatories to the code.[20] Following our review of 2021 transparency reports, we raised similar concerns with DIGI regarding differences between signatories' code commitments in their inaugural and 2021 reports, querying when these changes occurred and the process for publicising changes in commitments.

Should an opt-in approach to the code continue, it is important that there is a robust and transparent process that allows changes to code commitments to be announced. With the complaints facility now in operation, it is particularly important that there is certainty about signatory commitments at any point in time. As discussed in the previous section, we would welcome new obligations on signatories to notify DIGI as the code administrator and DIGI to update its website and notify relevant stakeholders within a certain period of time.

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[19] See finding 31, discussed on pg 62 of the report.

[20] Pg 44-45

We consider that these changes should also be accompanied by appropriate commentary in an annual report. We note that despite the independent review process, these changes were not highlighted. We also note that 5.27 of the code requires relevant signatories to convene an annual event. Whilst there may be justifiable reasons why this event did not occur, there are no references to the event in any signatories reports or the DIGI annual report. It is important that signatories be transparent about how they are or are not meeting their commitments under the code. We would further encourage the independent reviewer to call out any clear instances of non-compliance under the code.

We acknowledge there has been substantial work required to set up the new administration framework. Noting DIGI's ongoing involvement across a number of government initiatives, further improvements to the governance framework may necessitate DIGI's members providing it with additional resources to administer the code. As we have previously noted, many of the signatories to this code are orders of magnitude larger than other regulated entities in the communications sector and should be prepared to adequately resource voluntary initiatives.[21]

Our oversight report also noted some stakeholder concerns about DIGI's internal governance agreements (separate to code governance arrangements).[22] We would again encourage DIGI to improve the level of public transparency about its own governance structure and decision-making processes.

While the ACMA welcomes the development of more detailed governance arrangements, DIGI needs to further strengthen its code oversight and reporting processes. This includes providing greater transparency around the operation of the sub-committees and reporting on signatory non-compliance.

Code amendment processes

At present, the code is silent on the process of code amendment. We note that DIGI made amendments to the code in October 2021 to reflect its announced governance arrangements. These changes appear sensible, pragmatic and align with the information published on DIGI's website. However, the process undertaken to consult on and agree on code amendments among signatories is unclear. There were also no references to code amendments in other information published on DIGI's website at the time.

We encourage DIGI to improve mechanisms to improve public transparency about the process for making changes to the code (including minor changes). This could be achieved through several means. The code itself could be amended to outline the process for making changes. Alternatively, DIGI could publish information about its approach to amending the code. Similar guidance has been published by other industry associations such as Communications Alliance. Areas such guidance could cover include the processes for

> making changes to the code (including guidance on when a code change will require public consultation)

> approving code changes (including specifying the relevant decision-making person or body)

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[21] See page 80 of the oversight report

[22] See page 80 of the oversight report

> publicising amendments to the code, particularly in circumstances where it may impact the ability to make complaints under the code.

The ACMA encourages DIGI to develop and publish its processes for amending the code.

Code reporting and monitoring framework

The ACMA considers a robust reporting and monitoring framework is critical to the success of an outcomes-based code. This has been emphasised in both our position paper and oversight report.

Current reporting guidelines

The development and publication of reporting guidelines and the establishment of an independent review process is an important stepping stone. We acknowledge the work of DIGI and signatories, together with the independent reviewer, to further enhance the framework. Whilst the ACMA met with the DIGI and the independent reviewer to inform the development of the guidelines, we were not involved in their drafting or finalisation.

We note that the new guidelines have had regard to the findings we made in our oversight report. These guidelines have provided the framework for the 2021 reports and have led to some improvements in reporting (see below for further discussion). However, we are disappointed that the development of a KPI reporting framework was considered outside the scope of these guidelines.[23] This framework is vital to the success of the code as it allows signatories to track their progress to achieve outcomes, and for the industry to track the success of the code as a whole. The code amendments proposed in DIGI's discussion paper do not commit signatories or DIGI to further develop either the guidelines or framework.

The ACMA considers that, as a priority, additional work needs to be undertaken to further embed a robust reporting framework in the code. This should be informed by the independent reviewer observations and the ACMA's feedback on the current reporting processes.

Annual transparency reports

In our oversight report, we assessed the inaugural transparency reports. Overall, the assessment found that signatories met the initial reporting requirements set out in the code. The report included a range of findings to inform the development of a proposed reporting guideline including a more uniform approach to reporting, the need for more Australian specific data and metrics.

For the 2021 transparency reporting process, an independent reviewer has reviewed all reports and verified that signatories have fulfilled the formal requirements of the reporting regime.[24] DIGI's annual report states that 'this process does not involve an evaluation of the quality of the reports or the compliance with the Code but provides independent confirmation that certain publicly verifiable information is provided in accordance with agreed reporting guidelines'.

The ACMA's observations about the quality of reports is set out below.

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[23] See pg 33 of DIGI annual report.

[24] https://digi.org.au/wp-content/uploads/2022/05/ACPDM-_-Annual-Report-_-Published-June-6-2022-FINAL.pdf

ACMA observations about the 2021 reporting processes

Overall, the reports have improved in quality compared to the initial reports. Reports are more structured and consistent, reflecting the guidance issued by the independent reviewer. It is mostly clear which products and services fall under the code and what code outcomes signatories have committed to. Signatories have also included new diagrams and breakout case studies to illustrate their activities.

The COVID-19 pandemic was commonly used as a case study to demonstrate how a signatory's policies and initiatives have been applied to real-world events in 2021. Although outside of the reporting period, measures to prepare for the 2022 Australian federal election and to limit the spread of disinformation about the invasion of Ukraine by Russia also feature in the reports.

Across the board, there was an increase in the amount of Australian-specific data and information in the reports. Microsoft and Apple's reports showed updates and improvements from material listed in their May 2021 reports. Twitter's report also provided some data analysis behind changes, although this was largely based on global figures.

Despite improvements in the volume of information, reports rarely provided detail on how each signatory's activities are progressing and what internal metrics are used to track and assess the effectiveness of these measures. There is also an absence of meaningful qualitative analysis, with data often presented without comment or context. This makes it difficult to interpret. Signatories also provided data with different timeframes, making comparisons between global and Australia-specific data challenging.

There are several areas across the reports where the amount of data and information should also be enhanced. These include the process for handling user reports and complaints, as well as aggregated data on the number and resolution of these reports and complaints.

Whilst acknowledging that many signatories have long standing approaches or policies for dealing with misinformation, several reports have simply reiterated what was included in their inaugural reports. Signatories may wish to consider how they convey this information in future to be less repetitious and to make reports more digestible and meaningful.

Reporting framework enhancements

As outlined above, the ACMA considers that DIGI needs to undertake work to further develop and strengthen the code's reporting and monitoring framework as a matter of priority.

In our oversight report, we made several findings about the initial set of reports, as well as providing additional guidance on developing a reporting framework.[25] Given the diverse range of signatories – in size, business models and service offering – this is not an easy task. Not wanting to duplicate the material covered in our oversight report, some additional observations have been included below to inform further enhancements to the reporting framework.

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[25] See Appendix F

Despite the guidelines encouraging them to do so, signatories have not outlined any metrics (quantitative or qualitative) about how they are going to track their own progress in their individual reports.

This is problematic for several reasons – the data provided cannot be contextualised, there is no certainty that the same data will be provided in future reports to track performance, and there is no way to compare trends across the industry. For an outcomes-based approach to be successful, a robust, consistent monitoring framework is essential.

Similar issues have been encountered in Europe, and the strengthened EU code makes significant strides to codify a KPI framework at both a signatory and code level. This includes requiring signatories to report against specific qualitative reporting elements (QREs) and service level indicators (SLIs) under each code commitment.

Noting DIGI did not have the benefit of the revised EU code when developing its discussion paper, the ACMA considers it is a useful basis to consider potential code changes. DIGI should also consider the incentivises for organisations to participate in both codes. Greater harmonisation of transparency reporting would allow similar systems, processes and procedures to be used by signatories, and a greater ability to compare activities in different jurisdictions.

> *The ACMA considers that further enhancements to the reporting framework may require specific code obligations to drive the developments of KPIs. DIGI should draw upon European experiences to inform the development of a KPI framework.*

In considering potential enhancements to the framework, it would also be worthwhile revisiting the objectives of transparency reporting and examining whether the current arrangements are effectively meeting these.

The reporting guidelines specify that the objectives of annual reports are to:

> communicate to the general public measures taken by signatories against mis/disinformation, and

> provide a framework for the independent reviewer, DIGI and other stakeholders to audit compliance with the code.

There is little demonstrable evidence to suggest there is widespread use of the reports to communicate to the general public measures taken by signatories to combat mis- and disinformation. The ACMA did not observe promotion of the reports by signatories and found incidences of only 2 signatories that have published their reports outside the DIGI's website. DIGI may wish to seek feedback from other stakeholders on the extent to which the reports are seen to be performing this purpose.

In their second year of reporting, it is apparent that several signatories have long standing policies and community standards to address misinformation. While it is important that long running measures are captured and communicated, the annual transparency report may not be the best vehicle to communicate this material. There may be benefits in allowing signatories to catalogue their ongoing measures on a public website, which is then used for promotional purposes. We note that the strengthened EU Code suggests a concept of a transparency centre that performs a similar function.

The previous section of this submission includes our observations on both reporting on the status of signatories' opt-in commitments and compliance reporting with mandatory commitments. One conclusion that could be drawn is that the importance of the compliance elements of the reporting process have not been meaningfully utilised by signatories. A more clearly defined role for the reporting, more closely focused on compliance with the code and tracking the success of measures to meet the codes outcomes and objectives, may be appropriate.

> *DIGI may wish to reconsider and clarify the purpose of the transparency reports as the code matures. Given the limited use of the reports by signatories to raise awareness of their activities, DIGI should consider whether the reports are the best mechanism to promote measures under the code.*

Some platforms who have not signed up to the code have identified reporting as a potential barrier to joining the code. In the next iteration of the code, DIGI may wish to consider whether its one-size-fits-all approach reporting arrangements remains appropriate. While the ACMA has pushed for consistency in reporting frameworks, there is an argument that the level of detail and sophistication of this reporting should correspond with the size of the platform and potential for harm. A graduated or tiered reporting framework could be considered as part of the ongoing evolution of the code.

> *DIGI should consider the merits of a differentiated reporting framework that allows different types of reporting for larger and smaller signatories. This may encourage greater participation in the code. Nevertheless, in all cases, reporting should clearly focus on demonstrating signatory performance on meeting code objectives.*

Complaints

Complaints-handling regimes play a particularly important role in promoting public accountability and trust in industry-driven codes of practice, both in terms of redress for those negatively impacted by a signatory's actions or decisions, and as an avenue to raise concerns or highlight non-compliance with code commitments. Accountability in code arrangements may be further strengthened through the inclusion of an independent appeal or external dispute resolution process.

The ability for users to flag or report potential infringing content, and to make complaints regarding the activities of platforms, is important to the success of the code. This is dealt with in two areas of the code:

> - outcomes that enable users to report or flag content and behaviours; and access general information about responses to reports (outcomes 1c and 1d)

> - the establishment of a complaints facility for users to make complaints about possible breaches of the code (7.4).

User reporting and flagging mechanisms

As per the ACMA's earlier assessment in our oversight report, our view remains that signatories should have robust internal processes for capturing, reviewing and responding to user complaints and reports in a timely manner. These processes should be transparent, publicised to users, easy-to-use and responsive, in order to build confidence in the system.

All signatories appear to have met their code obligations for reporting mechanisms, as verified by the independent code reviewer. However, besides outlining how users can report content, signatories have provided little or no information on how they deal with these flags or the outcomes of these processes. The transparency reports do not include any data or metrics about the quantum of reports signatories have received over the previous 12 months regarding potentially infringing content or behaviour from Australian users under the code, or the proportion of these reports that resulted in a manual review and/or action being taken by the platform. We consider this to be a key weakness in the reporting framework, as the absence of data about user reports makes it challenging to draw conclusions about the operation or effectiveness of these processes.

Given the breadth of potential content being reported, it may not be feasible for signatories to respond individually to users at scale. However, some users may wish to appeal or make a complaint about a particular content moderation decision, or to make a complaint regarding a platform's policies or broader activities. It is not always clear how a user can make such a complaint, and platforms often do not provide relevant contact details for this purpose. We consider that DIGI should examine the reporting and internal complaints handling arrangements of signatories as part of its code review. This should include whether code obligations to promote reporting and complaints processes are required.

The code and associated reporting framework currently provide minimal transparency about user reporting and complaints processes. The ACMA considers that this an area that needs to be addressed.

DIGI complaints facility

Under the code, signatories agreed to establish a facility for resolving complaints by the public about possible breaches of their code commitments. DIGI launched a public complaints portal on its website in October 2022, along with terms of reference. This clarified that DIGI would only accept complaints about 'material breaches' of the code and not for individual items of content on signatories' products or services.

According to its annual report, as of 2 June 2022, DIGI had received 8 complaints through this portal. None of these complaints were deemed eligible, as they all related to individual content and not potential breaches of signatories' commitments. DIGI further noted that 3 of the 8 complaints related to content from members of parliament or electoral candidates, which is a class of content excluded under the code.

As there have been no eligible complaints about systemic breaches to the code, the independent complaints sub-committee has not yet had an opportunity to review or resolve any matters. This could indicate the code is working well but could similarly indicate a lack of public awareness about the complaints facility or that the eligibility criteria are too narrow. We would encourage DIGI to consider what, if any, changes may be needed to its complaints facility as part of this review.

The ACMA considers that DIGI should seek views from stakeholders (including through this review) about the effectiveness and awareness of its complaints facility.

Reporting and complaints handling processes will be also a key area of focus for the ACMA going forward. We intend to consult with platforms closely on the matter and will conduct relevant research and collaboration with fellow digital platforms regulators.

We are also aware that both the ACCC and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts are currently considering internal dispute resolution and external dispute resolutions for digital platforms. We note that there may be some overlaps between these processes and the review of this code and will continue to engage with these processes.

List of relevant ACMA findings and recommendations

In our June 2021 oversight report, we made a number of findings and recommendations that are relevant to this code review. We have listed these below. Further detail on these insights can be found in our report.

Recommendations

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.

Findings – Code reform

Finding 8: Misinformation narratives can result in a wide range of acute and chronic harms, including the erosion of trust in authoritative sources and democratic institutions over time.

Finding 12: Information on the effectiveness of platform measures is limited, and more needs to be done to better understand what measures work and to monitor the effectiveness of platform moderation activities.

Finding 18: 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 1 million active monthly users. DIGI should actively publicise the involvement of any additional code signatories as soon as practicable after their signing.

Finding 19: Industry participants should consider the role of private messaging platforms and smaller alternative platforms in the amplification of disinformation and misinformation and explore options for how these platforms could be included within the code framework.

Finding 21: The code objectives and principles meet the government objective of striking a balance between encouraging platform interventions and protecting freedom of expression, privacy and other rights.

Finding 22: 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 relevant to the signatory's services. Signatories should provide adequate justification when opting out.

Finding 24: 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.

Finding 25: Private messaging services should be included within the scope of the code as these are known vectors of disinformation and misinformation. These should be included with appropriate caveats on the right to privacy.

Finding 26: 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.

Finding 27: The treatment of paid and sponsored content should be clearer in the code. This should include a clear definition of sponsored content.

Finding 28: In addition to improving public awareness of the source of political advertising, the code should also cover the source of issues-based advertising.

Finding 30: The code should include industry-wide frameworks for the development and implementation of individual platform measures. Examples could include frameworks to establish:

> criteria for the assessment of harm

> criteria for assessing news and information quality

> processes for the exchange of information between platforms on disinformation and misinformation risks

> commitments to address the propagation of disinformation and misinformation via platform advertising channels

> commitments to address the risks of propagation via platform algorithms and architecture.

Findings – Code governance and reporting

Finding 31: The code provides a high-level code administration framework. Given that detailed arrangements for code administration, compliance with the code, and consumer complaints are still under development, the ACMA's ability to assess their practical effectiveness is constrained.

Finding 32: The code should include a framework setting out principles for the structure and operation of the sub-committee to provide greater transparency and accountability.

Finding 33: The reporting template provides a workable foundation for the reporting guideline. Reporting should incorporate adequate data to measures performance against KPIs under each outcome; detailed action plans to address areas identified for improvement; and a clearer distinction between measures (that is, outputs) and the effectiveness of these measures (progress towards outcomes).

Finding 34: The proposed 12-month review will provide an opportunity for findings from this report, and other developments, to be incorporated into the code.

Finding 35: The lack of detail on code administration matters, including on the operation of the sub-committee and guidelines for future code reporting, has limited the ACMA's ability to undertake a full assessment on the likely effectiveness of the code.

Finding 36: On the whole, signatories have met the initial reporting requirements set out in the code.

Finding 37: For the most part, signatories have provided appropriate explanations where they have not opted-in to specific commitments.

Finding 38: A more uniform approach to reporting would assist in cross-platform assessment and increase transparency of platform measures and performance.

Finding 39: For future reports, signatories should clearly specify the products and services covered by the code, and justify any major exclusions.

Finding 40: Signatories have a wide range of measures in place to address the problems of disinformation and misinformation and to improve the quality of news and information on their services. They also demonstrate responsiveness to significant changes over the last 18 months, as well as to public and government calls for stronger action.

Finding 41: It is expected that signatories will develop more Australia-focused measures over time.

Finding 42: In general, the reports are heavily focused on current measures and past actions, and signatories have provided little systematic information on future initiatives. In some cases, it is not clear to what extent certain measures will contribute to the achievement of the code outcomes under which they have been reported.

Finding 43: There are inconsistencies in the interpretations of key terms between signatories, which are drawn from pre-existing definitions from their internal, often global, policies. This makes it difficult to interpret and assess performance and to make industry-wide comparisons.

Finding 44: A harmonised template would assist in comparing initiatives across platforms. It would also allow clear reporting on additional information beyond the requirements of the code.

Finding 45: Signatories have provided a large range of information on the actions they have taken to address misinformation, disinformation and news quality and to invest in collaborative initiatives. This demonstrates signatories' commitment to addressing these issues.

Finding 46: The information signatories have provided is heavily focused on platform outputs and on volumetric data. Reporting lacks 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.

Finding 47: Reports provide some data on the Australian context, but this is often piecemeal or not directly related to actions under the code. Reporting should include Australia-specific data and signatories should establish a reporting regime against the Australian code.

Finding 48: Reporting lacks trend-related data. Trend-related data would contribute to a greater understanding of the extent and impact of disinformation and misinformation in Australia.