

MS22-001129




**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development, Communications and the Arts**

**To: The Hon Michelle Rowland MP, Minister for Communications** (for decision)

**Subject:** Combatting disinformation and misinformation in Australia.

**Critical Date:** Please action by 8 July 2022 to facilitate proposed timeframes.

Recommendations:	
1. That you <b>agree</b> to the recommendations made by the Australian Communications and Media Authority (ACMA) in its <i>Report to government on the adequacy of digital platforms' disinformation and news quality measures</i> that it be provided with information gathering, record keeping and code and standard making powers ( <b>Attachment A</b> ).	<b>Agreed / Not Agreed</b>
2. That you <b>agree</b> that public consultation on the new powers be undertaken and that you release a consultation paper in August with the intention of introducing legislation into the Parliament during the 2022 Spring sittings.	<b>Agreed / Not Agreed</b>
3. That you <b>sign</b> the letter to the Prime Minister at <b>Attachment B</b> seeking authority to implement the recommendations in ACMA's report based on the above approach.	<b>Signed / Not Signed</b>
<b>The Hon Michelle Rowland MP</b>	
<b>Comments:</b> 	<b>Date:</b> 12/7/22

**Key Points:**

1. We are seeking your agreement to provide ACMA with new powers that would strengthen the voluntary framework governing online disinformation and misinformation, and undertake public consultation on the proposed powers ahead of legislation being introduced into Parliament later this year.
2. In June 2021, on advice from ACMA, the former Government agreed that it be provided with new information gathering, record keeping, and code and standard making powers to support the Australian Code of Practice on Disinformation and Misinformation. The department's analysis of ACMA's recommendations and detail on the scope of the powers is at **Attachment C**.
3. ACMA's new information gathering and record keeping powers would allow it to better monitor and assess how platforms meet their obligations under the Code. It is proposed that ACMA could exercise these powers in relation to platforms that are not signatories to the Code. This will enable ACMA to understand how non-signatories are addressing disinformation and misinformation on their services and will minimise incentives for signatories to withdraw from the Code so as to avoid the reach of the powers.

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4. The proposed reserve code and standard making powers could be exercised where the Code (or any future code) proves ineffective. The powers would allow ACMA to ask the industry to develop a new code, to specify the platforms to which a new code would apply, and the nature of obligations it should contain. We propose that ACMA has the power to register a code, thereby making its obligations enforceable. If an industry code does not adequately address disinformation and misinformation, ACMA could impose obligations on the industry through its standard making power. It is expected that these powers will incentivise platforms to be more ambitious in their efforts to voluntarily address disinformation and misinformation and help ensure that platforms are able to assist other parts of government who focus on particular types of disinformation such as public health or electoral integrity.
5. In implementing these reforms, it will be necessary to strike a balance between the objectives of combatting serious harms from disinformation and misinformation, and preserving freedom of speech. It will also be necessary to consider complaints handling under any code or standard, which ACMA has only recently raised with us (see **Additional Information**).
6. If you agree to these reforms, we recommend that public consultation be undertaken to address any design and implementation issues ahead of legislation being introduced into Parliament. A consultation paper would be provided to you in late July with possible release in August. As part of the consultation process, you could convene a roundtable to hear the views of stakeholders directly. The timetable assumes the reforms could proceed on the basis of the Prime Minister's approval rather than a Cabinet process.
7. We recommend you agree in-principle to ACMA's recommendation to establish a Misinformation and Disinformation Action Group to support collaboration and information sharing between government, platforms and other groups (see **Additional Information**).
8. A number of Parliamentary inquiries have made recommendations regarding online harms, including disinformation and misinformation on social media. We will brief you separately on the recommendations arising from these inquiries.

**Financial impacts:** 2023-24 Budget funding will be required for ACMA.

**Legal/Legislative impacts:** Legislation is required. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

**Stakeholder Implications:** The Digital Industry Group Inc (DIGI) has recently indicated its support for ACMA's recommendations. Individual platforms have not publicly commented.

**Consultation:** PM&C, ACMA.

**Media Opportunities:** N/A

**Attachments:**

Attachment A: ACMA's report

Attachment B: Draft letter to the Prime Minister seeking policy authority to proceed

Attachment C: ACMA recommendations and department's analysis

Attachment D: Australian Code of Practice on Disinformation and Misinformation

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**Instructions for MPS:** Nil

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## Additional Information:

### *Freedom of speech v. combatting dis- and misinformation*

- Several individuals and groups have publicly raised concerns that ACMA's proposed powers will limit **freedom of speech and expression**. In Australia, there is no absolute right to freedom of speech and an expression of opinion carries with it, for example, responsibilities not to incite violence or defame individuals.
- It is currently the role of the signatories of the Australian Code of Practice on Disinformation and Misinformation (the Code) to address harmful material that appears on their services through a range of measures such as labelling false content, fact checking, prioritising trusted news sources, disabling accounts and removing content. This will to a large extent remain the approach under the new framework.
- There is a fundamental question whether foreign companies should be the arbiters of what is or is not harmful content in Australia or whether this is more appropriately the domain of elected representatives in line with community expectations. Critics of government regulation claim that these powers would result in unprecedented internet censorship.
- The design of ACMA's powers will need to carefully balance the public interest in addressing harmful content with the rights to freedom of speech. We intend to achieve this balance by making the digital platforms more transparent and accountable, including in relation to their practices to address disinformation and misinformation. In addition, we propose to confine the focus of ACMA's powers to systemic issues (rather than individual content). We also intend to frame ACMA's powers and the obligations of platforms based on a definition of disinformation and misinformation which has at its core the notion of 'serious harm'. This will place parameters around when digital platforms are expected to take action to combat disinformation and misinformation and when ACMA's powers are enlivened.
- We propose to discuss freedom of speech issues with the Attorney General's Department as we develop the policy proposal. It is expected that ACMA's powers would encourage platforms to be more ambitious in their efforts to address disinformation and misinformation through voluntary channels. If these voluntary efforts prove inadequate, platforms face the prospect of ACMA exercising its regulatory levers.

### *Complaints handling*

- ACMA has recently raised the issue of the mechanisms that may need to be established to resolve **complaints** where a platform breaches its commitments in a code or obligations in a standard. Under the current Code, complaints are handled by DIGI and an independent Complaints Sub-committee. The Sub-committee works with the platforms to resolve complaints about potential material breaches of the Code based on the severity of the breach, taking steps that range from public statements, investigations and withdrawing a company from the Code. Complaints about individual items of content on signatories' products or services must be directed to the signatory.
- ACMA has indicated that complaints handling arrangements will need to be considered in order to support the new framework. ACMA has advised that it is not in a position to review or consider individual complaints and any role is best targeted at considering systemic issues only. We will continue to work closely with ACMA to design a possible mechanism.

### *Referrals and requests from other government agencies under the new ACMA powers*

- We propose that other government departments such as the Australian Electoral Commission, Home Affairs, Defence, Health, Foreign Affairs and Trade, would have the ability to make informal requests for information on specific issues such as public health efforts, community cohesion, electoral integrity, conflicts and international issues.

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They would also be able to make suggestions to ACMA on the exercise of the information gathering, record keeping, and code- and standard making powers.

*ACCC Digital Platforms Inquiry*

- In 2019, the former Government responded to recommendations by the Australian Competition and Consumer Commission in its Digital Platforms Inquiry final report and agreed that it would ask the major digital platforms to develop a voluntary code of conduct for disinformation and news quality. ACMA would have oversight of the codes and report to Government on the adequacy of platforms' measures and the broader impacts of disinformation.

*Australian Code of Practice on Disinformation and Misinformation*

- The Digital Industry Group Inc released the Code in February 2021 (see **Attachment D**). There are currently eight signatories: Adobe, Apple, Meta, Google, Microsoft, Redbubble, TikTok and Twitter.
- The Code has two mandatory obligations: platforms must act to reduce the impact of harmful disinformation and misinformation on their services and they must publish an annual 'transparency report' on the measures taken to address disinformation and misinformation. The Code also has a number of additional outcomes that signatories can elect to sign up to.
- In June 2021, ACMA reported to the former Minister on the adequacy of platforms' measures under the Code (see **Attachment A**). ACMA found that the Code was a positive step forward in addressing disinformation and misinformation but that the first round of transparency reports lacked systematic data on which to benchmark performance in the Australian context. ACMA made 5 recommendations to strengthen the voluntary framework, including that it be provided with information gathering, record keeping, and code- and standard making powers.
- In relation to its recommendation on establishing a Misinformation and Disinformation Action Group, while we think such a group could be beneficial, it will be important to ensure alignment within the policy architecture governing digital platforms across government. We propose to continue discussions with ACMA and will provide further advice on this recommendation in due course.
- ACMA's report also made a number of findings which will be considered by DIGI as part of its review of the Code which it announced on 6 June. DIGI will undertake a targeted consultation process until 18 July. At this point, it is unclear when the review of the Code will be completed.
- On 30 May 2022, the second round of transparency reports were released. ACMA's initial assessment is that there have been some improvements in the quality of the reports but more needs to be done to achieve consistency of reporting across signatories and improve key performance indicators to track and measure performance over time.





## The Hon Michelle Rowland MP

**Minister for Communications  
Federal Member for Greenway**

Ref: MS22-001129

The Hon Anthony Albanese MP  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I write to seek policy approval to implement new regulatory powers for the Australian Communications and Media Authority (ACMA) to combat online disinformation and misinformation. I have provided further detail on the proposed powers at Attachment A.

There is growing concern amongst Governments regarding the scale and speed at which disinformation and misinformation is spread online. The 2016 Brexit campaign and the US Presidential election, and more recently the COVID-19 pandemic and Russia's invasion of Ukraine highlight how digital platforms can be used to undermine democratic values, institutions and the rule of law.

In response to the Australian Competition and Consumer Commission's Digital Platforms Inquiry Final Report, the former Government indicated that it would ask the major digital platforms to develop a voluntary code (or codes) of conduct for disinformation and news quality. ACMA would have oversight of the codes and report to Government on the adequacy of platforms' measures and the broader impacts of disinformation.

The Digital Industry Group Inc. released the Australian Code of Practice on Disinformation and Misinformation (the Code) in February 2021. The Code currently has eight signatories: Adobe, Apple, Meta, Google, Microsoft, Redbubble, TikTok and Twitter.

In June 2021, ACMA provided a report to the former Minister on the adequacy of digital platforms' disinformation and news quality measures. The report highlighted that disinformation and misinformation were significant and ongoing issues. It found that while the Code was a positive step forward in addressing disinformation and misinformation, the voluntary framework should be strengthened by providing ACMA with information gathering, record keeping, and reserve code and standard making powers.

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The Hon Michelle Rowland MP  
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ACMA's new information gathering and record keeping powers would allow it to better monitor and assess how platforms meet their obligations under the Code. It is proposed that ACMA could exercise these powers in relation to platforms that are not signatories to the Code. This will enable ACMA to understand how non-signatories are addressing disinformation and misinformation on their services and will minimise any incentive for signatories to withdraw from the Code so as to avoid the reach of the powers.

The proposed reserve code and standard making powers could be exercised where the Code (or any future code) proves ineffective to mitigate harms arising from disinformation and misinformation. The powers would allow ACMA to ask the industry to develop a new code. They would also enable ACMA to specify the platforms to which a new code would apply and the nature of obligations which it should contain. I also propose that ACMA have the power to register a code, thereby making its obligations enforceable. ACMA's powers to make a standard could be used in circumstances where, for example, industry failed to make a new code or where action was needed to address a serious and emerging risk.

It is expected that these powers would encourage platforms to be more ambitious in their efforts to address disinformation and misinformation through voluntary channels. If these voluntary efforts prove inadequate, platforms face the prospect of ACMA calling on its regulatory levers.

To progress the reforms, I propose that a consultation paper be released in August which will help inform the design of legislation, which I propose be introduced in the Parliament's 2022 Spring sittings. I will seek further policy authority should any issues arise during the consultation process.

I also seek your approval to bring forward a funding proposal in the context of the 2023-24 Budget process should ACMA require extra resourcing to undertake its new functions.

ACMA's new powers will be an important tool to support the current voluntary framework. In the event that the voluntary efforts of platforms are inadequate, the new powers will provide an important backstop for the regulator to respond to concerns about online disinformation and misinformation. Moving quickly to implement the powers will signal to digital platforms that the Government is serious about tackling these harms.

Yours sincerely



Michelle Rowland MP

12 / 7 / 2022

**Attachment A****Graduated application of ACMA powers to combat disinformation****Voluntary platform reporting and responses**

Platforms continue to fulfil their commitments under the industry Code, including the publication of annual transparency reports. Recognising the voluntary nature of the framework, it is intended that ACMA, in the first instance, would work with digital platforms to voluntarily lift ambition in addressing disinformation and misinformation.

Regulatory levers could be called upon should the voluntary framework prove inadequate

**Information gathering and record keeping powers**

ACMA's **information gathering powers** could be used to compel digital platforms to provide information or data on how they are complying with their obligations under the Code (or future code) or information on any other activities taken to address disinformation and misinformation. ACMA may also make targeted **record keeping rules** to improve the data collected by digital platforms.

It is proposed that these powers could apply to all digital platforms, regardless of whether they are signatories to an industry code. This will enable ACMA to understand how non-signatories are addressing disinformation and misinformation on their services. Importantly, applying the powers broadly across the sector will minimise any incentive for signatories to withdraw from an industry code so as to avoid the reach of ACMA's powers.

ACMA could ask industry to develop new codes or vary an existing code. ACMA could also register and deregister codes

Where the current Code (or any future code) proves ineffective to mitigate harms arising from disinformation and misinformation, and the industry fails to act to address deficiencies, ACMA can ask industry to **vary the code or develop a new code**.

ACMA could register an industry code, thereby making its obligations enforceable. ACMA could extend the code to other platforms by updating the registration. ACMA would also be able to deregister a code where it no longer is required to address online disinformation and misinformation.

ACMA could make an industry standard to address gaps or deficiencies in industry initiatives

If industry failed to take appropriate action to address online disinformation and misinformation through a code, ACMA could use its **power to make an industry standard**. A standard could apply to all relevant companies irrespective of whether they have been signatories of the Code. This power could also be called on to address emerging and serious risks. ACMA would have appropriate powers to enforce the standard.

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ACMA Recommendation	Department's Recommendation	Minister's Preferred Approach
<p>1. The Government to encourage Digital Industry Group Inc (DIGI) to consider the findings in its report when reviewing the Australian Code of Practice for Disinformation and Misinformation (the Code) in February 2022.</p>	<ul style="list-style-type: none"> <li>• The department <b>agrees</b> with this recommendation.</li> <li>• It is important that DIGI considers a range of sources to inform the Code's review, including the ACMA report which contains a number of findings on how the Code can be strengthened. These include: <ul style="list-style-type: none"> <li>○ The need for greater publicity on changes to the Code.</li> <li>○ That an opt-out rather than opt-in framework be adopted.</li> <li>○ The scope of definitions be considered, in particular the narrow definition of 'harm' and the exclusion of some relevant products and services from the scope of the Code.</li> <li>○ Reporting by signatories should focus on improving Key Performance Indicators (KPIs).</li> </ul> </li> <li>• DIGI has indicated that it will consider ACMA's findings as part of its review of the Code, which was announced on 6 June.</li> </ul>	
<p>2. ACMA to continue oversight of the operation of the Code and report to Government by the end of the 2022-23 financial year.</p>	<ul style="list-style-type: none"> <li>• The department <b>agrees</b> with this recommendation.</li> <li>• A continued oversight role would allow ACMA to provide ongoing assessments of the effectiveness of the Code.</li> <li>• The Code is still in the early phases of implementation– it was only released in February 2021 and the Code's independent oversight and public complaints mechanism was announced in October 2021. DIGI is currently reviewing the Code and we expect some changes as a result of this process.</li> <li>• Reporting to Government by June 2023 would enable ACMA to consider the outcomes of DIGI's review of the Code and how platforms have continued implementing their obligations under it.</li> <li>• No additional funding has been provided to ACMA for this function.</li> </ul>	

<p>3. ACMA be provided with formal information gathering powers to oversee digital platforms, including the ability to request Australia-specific data on the effectiveness of measures to address disinformation and misinformation.</p>	<ul style="list-style-type: none"> <li>• The department <b>agrees</b> with this recommendation.</li> <li>• The first set of transparency reports published by Code signatories in May 2021 lacked systemic data, metrics or KPIs which would allow industry performance to be tracked over time. The reports also lacked Australia-specific data on how platforms were dealing with disinformation and misinformation. ACMA's initial assessment of the May 2022 transparency reports is that there have been some improvements in their quality but more needs to be done to achieve consistency of reporting across signatories and improve KPIs to track and measure performance over time.</li> <li>• Providing ACMA with information gathering powers, including the ability to make record keeping rules, would enable ACMA to compel platforms to provide greater detail on how they are addressing disinformation and misinformation on their services, including the provision of more robust and measurable data. This will facilitate better monitoring and assessment of how platforms are meeting their Code obligations and will be particularly important if the platforms' annual reporting under the Code is deficient.</li> <li>• It is intended that ACMA only call on these powers in circumstances where platforms fail to respond to voluntary requests.</li> <li>• We are proposing that ACMA be able to apply the information gathering and record keeping powers to platforms that are not members of the Code. This will enable ACMA to understand how non-signatories are addressing disinformation and misinformation on their services. Importantly, applying the powers broadly across the sector will minimise any incentive for signatories to withdraw from the Code so as to avoid the reach of ACMA's powers.</li> <li>• The design of the powers will draw on similar powers ACMA has in other parts of the communications sector.</li> </ul>	
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<p>4. ACMA be provided with reserve powers to register industry codes, enforce code compliance and make standards relating to the activities of digital platforms' corporations.</p>	<ul style="list-style-type: none"> <li>• The department <b>agrees</b> with this recommendation.</li> <li>• The Code is a significant step forward in combatting disinformation and misinformation and it is hoped that DIGI's review of the Code will lead to improvements in the voluntary framework.</li> <li>• Despite this, the growing threat of online disinformation and misinformation, and the seriousness of the potential harms, warrants the introduction of regulatory levers which could be called upon should the voluntary framework prove inadequate. These powers could be exercised where, for example, the current Code (or any future code) proves ineffective to mitigate harms arising from disinformation and misinformation, and the industry fails to take action to address deficiencies.</li> <li>• The powers would enable ACMA to: <ul style="list-style-type: none"> <li>○ Ask the industry to develop a new code or vary an existing code.</li> <li>○ Specify the platforms to which a new code would apply and the nature of obligations which it should contain.</li> <li>○ Register an industry code, thereby making its obligations enforceable, or deregister a code where it is no longer needed to address online disinformation and misinformation.</li> </ul> </li> <li>• ACMA would also be able to make a standard, for example, in circumstances where industry failed to make a new code or where action is needed to address a serious and emerging risk.</li> <li>• It is expected that the reserve code and standard making powers would incentivise platforms to be more ambitious in their efforts to address disinformation and misinformation through voluntary channels.</li> </ul>	
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<p>5. Government to consider establishing a Misinformation and Disinformation Action Group to support collaboration and information-sharing between platforms, Government, researchers and NGOs.</p>	<ul style="list-style-type: none"><li>• The department <b>agrees in principle</b> with this recommendation.</li><li>• While we think such a group could be beneficial, it will be important to ensure that it fits within the policy architecture governing digital platforms. There are a number of government agencies with an interest in disinformation and misinformation, including the Department of Home Affairs and Department of Foreign Affairs and Trade, as well as non-government stakeholders, and close collaboration is required to properly understand and combat harmful content.</li><li>• As part of establishing any new group, the department sees value in doing an analysis of existing and emerging groups that are working to address disinformation and misinformation in Australia so that we avoid duplication and improve coordination on these issues.</li><li>• We propose to continue discussions with ACMA on this recommendation and will provide further advice to you on this matter in due course.</li></ul>	
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