

Division/Agency Name: Australian Communications and Media Authority

Topic: ACMA's regulatory responsibilities

Name asked: Senator Karen Grogan

1. Can the ACMA outline its current role as a regulator for broadcasting, telecommunications and certain online content?
2. How will the ACMA leverage its expertise and existing suite of powers to enforce the provisions of this bill, including its co-regulatory approach through industry codes of practice?

Answer:

Can the ACMA outline its current role as a regulator for broadcasting, telecommunications and certain online content?

Over successive years, the ACMA has been empowered to regulate broadcasting, radiocommunications, telecommunications and some online content in accordance with our functions under the *Australian Communications and Media Authority Act 2005* (the ACMA Act) and 4 principal Acts – the *Radiocommunications Act 1992*, *Telecommunications Act 1997*, *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Broadcasting Services Act 1992* (BSA).

There are other Acts that confer regulatory jurisdiction on the agency or are relevant to the ACMA such as the *Spam Act 2003*, the *Do Not Call Register Act 2006* and the *Interactive Gambling Act 2001*. The ACMA may also make legislative instruments and register industry codes in areas where primary legislation requires or permits.

The ACMA undertakes a full range of regulatory activities under these Acts. These include:

- Undertaking research and analysis of industry trends and consumer expectations to inform its work— including the three reports to Government on disinformation and misinformation undertaken since 2021
- Providing clear guidance and direction to industry of the views of the regulator, including in the development of industry codes of practice, most recently in relation to the development of a new Telecommunications Consumer Protection Code;
- Investigating complaints and gathering evidence (including through audit processes) of potential industry non-compliance;
- Enforcing compliance with rules using the suite of powers given under different legislative scheme which can include administrative and/or civil action (see below);
- Developing and implementing new rules where issues emerge and for which it has delegated regulatory powers:
 - For example, the ACMA has taken action to make industry standards where there is evidence that industry codes are not delivering effective outcomes or protections for Australians.

- This has included enhancing complaints handling rules for telecommunications companies and making stricter requirements to help customers stay connected to telecommunications services.
- In addition, the ACMA has made a range of rules regarding the testing, communications and reporting on telecommunications network outages.

The ACMA undertakes a wide range of enforcement actions under the regulatory regimes for which it is responsible with a focus on effective measures that result in sustained compliance, appropriate transparency, and protections for consumers. In 2023-24, the ACMA successfully undertook a range of enforcement activities under our existing regulatory remit.

- We took enforcement action against large corporations, including Kmart, Uber and Ticketek for breaches of Australia's spam rules. Our anti-spam enforcement actions resulted in financial penalties of more than \$9.5 million for the businesses involved and act as a deterrent for unlawful electronic marketing practices.
- Telecommunications companies were penalised more than \$5 million for non-compliance matters, including a \$3 million penalty to Telstra for wrongly charging customers for inactive internet services. This has since been followed with an agreement on 8 November 2024, from Optus, to pay penalties totally more than \$12 million for breaches of emergency call service rules.
- In May 2024, we filed proceedings in the Federal Court against Optus for its 2022 data breach, which potentially impacted more than 9.5 million current and former customers.
- Following action taken by the ACMA, in July 2023 the Federal Court imposed a penalty of \$5 million on Diverse Link Pty Ltd for contraventions of the *Interactive Gambling Act 2001* (IGA). This was the first time the Federal Court has ordered a civil penalty in relation to contraventions of the IGA.
- We continue to disrupt illegal offshore gambling sites operating in Australia. More than 1,000 illegal gambling sites have been blocked since the ACMA commenced this work in 2019.
- We accepted 16 enforceable undertakings, including 6 enforceable undertakings in relation to the SMS and email unsubscribe rules.
- We issued 5,698 informal warnings or advice.
- We issued 62 formal warnings or advice, including formal warnings to 15 services that breached interactive gambling rules during the 2023 FIFA Women's World Cup.

How will the ACMA leverage its expertise and existing suite of powers to enforce the provisions of this bill, including its co-regulatory approach through industry codes of practice?

The Australian Communications and Media Authority (ACMA) has developed expertise overseeing platform efforts to address misinformation and disinformation in Australia. Since 2021, the ACMA has overseen industry efforts under the ACPDM. The ACPDM was developed by industry and the Digital Industry Group Inc (DIGI) following extensive guidance issued by the ACMA in a [2020 position paper](#). This position paper set out our expectations about its scope and design, as well as an approach to performance reporting.

Since DIGI released the ACPDM in February 2021, the ACMA has provided three reports to government on its operation and on signatories' transparency efforts under its objectives. Each report has made observations about the effectiveness of platform systems and processes and the quality of the data that underpins platforms transparency under the code. These reports have relied upon assessment of platforms' transparency reporting, ACMA commissioned and independent research and monitoring of platform's activities and international regulatory developments. Our latest report was released in September 2024, and all three reports are available on [our website](#).

The ACMA would leverage its experience overseeing compliance with transparency requirements and co-regulation of codes of practice for the broadcasting and telecommunications industries when undertaking compliance and enforcement activities under this Bill.

Should the Bill pass the ACMA anticipates immediately undertaking the following steps:

- Educate the public and platforms about the ACMA's new powers, and the obligations placed on the ACMA in exercising them.
- Publish additional guidance for industry about the providers and services captured by the legislation.
- Communicate to platforms the impact of the legislation and our expectations for initial compliance with transparency obligations including on data access for researchers and related obligations under the voluntary code. We will also communicate our proposed approach to enforcement and steps we may take in response to inadequate action to improve voluntary arrangements.
- Continue to engage and work with industry to adopt the voluntary code and improve voluntary transparency reporting. This includes supporting DIGI and code signatories to adopt pilot metrics to improve reporting under the code that will increase transparency and greater comparability.
- Use information-gathering powers should voluntary efforts to improve transparency fail or prove inadequate e.g. compulsory notices could be used to obtain data on new pilot metrics from platforms who do not sign up to the code or participate in work to improve transparency reporting.

From six months after Royal Assent, the ACMA would:

- monitor compliance with transparency obligations in Division 2 when they come into effect and consider whether further intervention is required to support these obligations. This could include using compulsory notices or making specific rules for sections of the industry.
- consider whether voluntary actions taken by industry to address complaints handling are fit for purpose and whether further rules are required.
- report on the operation of the bill.

As implementation progresses, the ACMA would:

- continue to assess the need for digital platform rules, codes and standards.
- engage proactively with DIGI to uplift the voluntary code and consider the use of code registration / standard making powers if voluntary measures are not effective.
- provide advice to inform the review on researcher data access and subsequent triennial reviews of the Bill.

While the policy settings for the Bill are unique, the ACMA is highly experienced in the regulatory powers proposed in relation to co-regulation, code and standard making and investigation and compliance action. Our experience includes:

- setting clear expectations about what should be in industry codes such as our 2020 position paper, the [What Audiences Want](#) and [What Consumers Want](#) position papers.
- administering transparency initiatives such as [voluntary reporting on Australian content on streaming services](#)
- making and administering record keeping rules to improve our data on how telcos handle complaints and we publish this data on [our website](#).
- considering industry codes for registration across the broadcasting and telecommunication sectors.
- developing practical guidance to assist industry to meet their regulatory obligations.
- achieving proportionate enforcement outcomes including with formal warnings, remedial directions and infringement notices to encourage compliance and deter non-compliance.