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Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600
Via email: em@aph.gov.au

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Dear Secretary,

ACMA submission to the JSCEM Inquiry into the 2022 federal election

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. Our remit also includes some aspects of online content advertising.¹

Under the *Broadcasting Services Act 1992* (the BSA), the ACMA has a role in regulating political and election communications on licensed radio and television broadcasters, including the enforcement of election advertising 'blackout' rules. The ACMA publishes and regularly updates [Political and election matter guidelines](#) (the guidelines) which are intended to assist broadcasters in identifying political and election matter and increase general awareness of the associated rules.

Additionally, the ACMA regulates email spam and telemarketing and oversees the voluntary efforts of the Australian digital platform industry to address harmful online mis- and disinformation.

The ACMA welcomes the opportunity to provide the Committee with a submission to this Inquiry. Our submission highlights relevant areas of our responsibility and provides observations on the application of these rules, including during the 2022 federal election.

Blackout periods and other relevant BSA rules

The BSA sets out mandatory election blackout rules for licensed commercial, community, subscription and narrowcast television and radio broadcasters. These rules prohibit the broadcast of election advertising within the 'relevant period', beginning midnight on the Wednesday before polling day, and ending at the close of voting. Election advertising means an advertisement containing 'election matter',² the broadcast for which the licensee directly or indirectly

¹ For example, restrictions on gambling advertising during live-streamed sport and illegal internet gambling services.

² 'Election matter' means matter of any of the following kinds: a) matter commenting on, or soliciting votes for, a candidate at the election, b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs, c)

receives consideration; or an announcement of sponsorship of a program by a candidate or political party participating in the election.

Election blackouts only apply to parliamentary elections, that is, federal and state or territory general and by-elections. The blackout applies to any broadcaster whose licence area includes an area where the election is taking place. There is no blackout period for local government elections.

For federal elections and by-elections, and state and territory general elections, the ACMA updates its [website information](#) about current election blackouts shortly after election dates have been publicised by the Australian Electoral Commission (AEC). People can complain directly to the ACMA if they believe a broadcaster has not complied with the blackout rules, and the ACMA may investigate such complaints if it considers it is desirable to do so.

Importantly, the blackout rules only apply to a broadcasters' television and radio services licensed under the BSA, and do not apply to any election advertising in print, on a broadcasters' streaming or catch-up service, on social media, or any other website or online platform. As a result, many Australians continue to receive some form of election advertising during these media blackout periods. This caused some confusion for viewers during the 2022 federal election, with audiences either assuming the material they had seen breached the rules or expecting the blackout rules to cover a broader range of services than they currently do.

The ACMA received 34 complaints alleging election ads were shown during the blackout period. The majority of these appear to have been the result of complainants seeing an election ad while streaming 'broadcasting' content online, such as via a catch-up service or on-demand app on a smart TV. After seeking additional information from complainants, only 4 of the 34 expressly alleged that the ads were shown on broadcast services. The ACMA contacted the relevant broadcasters, and none were found to have broadcast the material complained of.

In addition to the election advertising blackout, other rules apply to broadcasters during an election period. This includes a special licence condition under the BSA requiring broadcasters to give all political parties reasonable opportunities to broadcast election matter, provided the party has previously been elected and is contesting the election.³ Under the registered industry code, commercial free-to-air TV broadcasters are also permitted to air an extra minute of political ads per hour during this period.⁴

Both during and outside of election periods, broadcasters also have ongoing obligations regarding the identification or 'tagging' of certain political material. Whenever a television or radio licensee broadcasts 'political matter'⁵ at the request of another party (such as an election ad paid for by a political party), a tag (known as the 'required particulars') must immediately follow the

matter commenting on, stating, or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs, or d) matter referring to a meeting held or to be held in connection with the election.

³ These obligations do not apply if a licenced broadcaster chooses not to broadcast any election matter; Schedule 2, ss.3(2), *Broadcasting Services Act 1992*.

⁴ Paragraph 5.3, Commercial Television Industry Code of Practice 2019.

⁵ A 'political matter' is defined broadly as 'any political matter, including the policy launch of a political party'.

communication.⁶ The required particulars must identify the source of the political matter (such as the political party), the name of the person who authorised it, and be spoken in a manner that is intelligible to the relevant audience.⁷

These requirements, which are enforceable by the ACMA, are designed to allow for reasonably balanced access to differing political opinions during an election campaign, while providing ongoing transparency to audiences about who is trying to persuade them or influence their vote.

During the 2022 federal election campaign, the ACMA received no complaints about tagging and no complaints about broadcasters failing to provide access to political candidates, or evidence of potential breaches of advertising restrictions by commercial TV broadcasters.

Ahead of the 2022 federal election, the ACMA updated the guidelines to reflect recent legislative changes and provide licensees with greater clarity as to the scope of their obligations when broadcasting political and election matter.

Political messages and phone calls

The ACMA also regulates commercial electronic messages (spam) and telemarketing under the *Spam Act 2003* (Spam Act), the *Do Not Call Register Act 2006* (DNCR Act), and related industry standards, including the Telecommunications (Telemarketing and Research Calls) Standard 2017.

In general, spam and telemarketing rules do not apply to calls and messages from political parties. This is because most political messages are seeking to influence a person's vote and are not commercial in nature. Nevertheless, registered political parties are largely exempted from spam and telemarketing rules, even if the message relates to the provision of goods and services.

The ACMA received 9,886 complaints about political SMS and email messages in 2021-22. This equates to nearly half of all spam complaints received by the ACMA during this period. An overwhelming majority of these complaints (98.5%) were about SMS messages authorised by Mr Craig Kelly, former MP, on behalf of the United Australia Party (UAP) ahead of the 2022 federal election.

As the UAP messages were not commercial in nature, they are not covered by the Spam Act. However, because of the volume of complaints received, the ACMA released a [statement](#) on 1 September 2021 clarifying our role in relation to political messages.

Political bulk messages are regulated under the *Commonwealth Electoral Act 1918* and associated instruments. Under that legislation, such messages can be sent without consent or an unsubscribe facility, however, they must contain details about the authoriser.

The ACMA has provided aggregated information about the number and nature of the above complaints about UAP messages to the AEC and the Therapeutic Goods Administration (TGA).

⁶ Schedule 2, ss.3(2), *Broadcasting Services Act 1992*.

⁷ In 2021, the ACMA breached a television licensee for airing a political ad in which the required particulars were spoken so quickly as to render them unintelligible to the audience; See, ACMA (2021), [BI-585 Investigation report](#).

Truth in political advertising

The scope of this inquiry includes consideration of whether there is a need for 'truth in political advertising' laws to enhance the integrity and transparency of the electoral system. As the regulator overseeing the [broadcasting industry codes of practice](#) and the digital platform industry's [Australian Code of Practice for Disinformation and Misinformation](#) (ACPDM), the ACMA is well placed to comment on how both broadcasters and online platforms currently respond to potential falsehoods in political advertising.

All registered broadcasting codes in Australia require factual content in news and current affairs programs to be accurate, and in some cases, impartial. These accuracy and impartiality provisions do not apply to non-program advertisements. Instead, advertising content is subject to a self-regulatory system, developed by the Australian Association of National Advertisers (AANA) and administered by the Advertising Standards Bureau (Ad Standards). The AANA's Code of Ethics prohibits advertising that is misleading or deceptive, however these provisions do not apply to political or election material. Ultimately, political advertising is run at the discretion of each broadcaster or publisher, and there is no obligation for this content to be truthful – provided it meets the appropriate tagging requirements and is not likely to mislead or deceive electors about the process of casting a vote.⁸

This is similar to the online advertising landscape. Many of the largest digital platforms have voluntarily signed up to the ACPDM,⁹ committing to provide Australian users with safeguards against harms that may arise from verifiably false, misleading or deceptive content. While this is intended to cover any user-generated content that may pose a serious and imminent threat to democratic political and policymaking processes, the code does not apply to content that has been authorised by a political party registered under Australian law, or any political advertising as defined under the code.¹⁰

Despite this exemption, the ACPDM does have a related optional commitment where signatories can elect to implement measures to improve public awareness of the *source* of political advertising carried on their services. This includes providing users with greater transparency over why they have been targeted for ads and who is funding them. Half of the current code signatories – Google, Meta (Facebook), Microsoft and TikTok – have opted-in to this commitment and have provided details in their annual transparency reports.

If the Parliament considers there is a case to regulate truth in political advertising, the ACMA considers it would be highly preferable for that to be done through consistent and enforceable rules across all content-delivery platforms.

The ACMA also considers the content of political advertising should continue to be outside the scope of the ACPDM, provided there is sufficient certainty on

⁸ See, s. 329, *Commonwealth Electoral Act 1918*.

⁹ The signatories, as of October 2022, are Apple, Adobe, Google, Meta, Microsoft, Redbubble, TikTok and Twitter.

¹⁰ Defined as paid-for advertisements made by, on behalf of a political party, or that advocated for the outcome of an election or referendum, or that advocate for the outcome of a political campaign concerning a social issue of public concern in Australia or are regulated as political advertising under Australian law.

what content is to be exempted. As part of a current industry-led review of the code, the ACMA has advocated for further clarity on whether the political advertising exemptions are intended to extend to general political advocacy, for example, on social and environmental issues.¹¹

To remove this uncertainty, the ACMA has proposed the digital platform industry amend the definitions under the code to more closely align with the concept of an 'electoral matter' under the Commonwealth Electoral Act.¹² This would limit the scope of the exemption to political ads whereby the primary purpose is to influence the way electors vote in an election. The code administrator, DIGI, is currently considering this issue.

Despite political advertising not being caught under the ACPDM, we are aware of recent examples of signatories removing Australian political advertising content due to policy violations. This includes:

- > YouTube removing 12 promoted videos posted from the account of the UAP in late 2021, and
- > Meta and YouTube removing political ads from the accounts of both the Australian Labor Party and the Liberal Party of Australia in April 2022.

It is likely that these ads were removed due to a breach of the platforms' respective misinformation policies on COVID-19 and elections. However, neither Google nor Meta have published information on the content of these removed political ads, or even what policy violation had occurred. Additional transparency about the removal of political ads on platforms would be a welcome enhancement.

Outside of the context of political advertising, the ACMA is aware of some prominent examples of mis- and disinformation about Australia's 2022 federal election being circulated on digital platforms. This includes claims of voter fraud and other 'stolen election' narratives, which in some cases, were amplified via politicians and authorised political parties during the campaign.¹³ We note the work of the AEC, including its highly engaged social media presence, public [disinformation register](#) and direct engagement with the platforms on potentially infringing content about voting, helped ensure the reach and impact of these false election narratives was limited.

Work with the Electoral Integrity Assurance Taskforce (EIAT)

The ACMA's unsolicited communications area engaged closely with the Electoral Integrity Assurance Taskforce (EIAT) during the election period. Between 10 April 2022 and 25 May 2022, the ACMA provided weekly reports to the EIAT on complaints and reports it received about email and SMS messages

¹¹ ACMA (2022), [ACMA submission to the 2022 review of the Australian Code of Practice on Misinformation and Disinformation](#), July.

¹² s. 4AA, *Commonwealth Electoral Act 1918*.

¹³ For example, on 29 April 2022, Pauline Hanson's One Nation Party posted an episode of its satirical 'Please Explain' cartoon series on social media which included several claims presented as fact which were subsequently labelled as disinformation by the AEC. Following a request by the AEC, the clip was removed by Meta and TikTok, and made inaccessible to viewers using an Australian IP address on YouTube and Twitter.

relevant to the 2022 Federal Election. These reports contained de-identified and summary information only.

The ACMA also worked with the EIAT on a joint [factsheet](#) on how to make a complaint about online misinformation or disinformation. This was published on both the ACMA and AEC websites and provided links to the relevant instructions of each of the major digital platforms in Australia. The factsheet included a brief overview of the DIGI code and noted DIGI's separate complaints portal for reporting potential breaches of the code.

I hope this information is of assistance as your inquiry progresses. The ACMA would be happy to provide additional information to the Committee as required.

Yours sincerely



Nerida O'Loughlin PSM
6 October 2022