

# **Australian Communications and Media Authority Submission**

Parliamentary Joint Committee on Intelligence  
and Security

Inquiry into extremist movements and  
radicalism in Australia

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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 remit also includes some aspects of online content regulation; for example, restrictions on gambling advertising in live-streamed sport and illegal internet gambling services.

The [eSafety Commissioner](#) (eSafety) is an independent statutory office supported by the ACMA. eSafety is responsible for issues concerning cyberbullying, image-based abuse, and illegal and harmful online content.<sup>1</sup>

## ***The ACMA oversees broadcasting and narrowcasting industry codes of practice***

The ACMA oversees broadcasting industry codes of practice that apply to commercial television and radio, community, subscription and national broadcasters. We also have oversight of open and subscription narrowcast radio and television codes of practice. These industry codes set out matters relating to classification of material and the provocation or perpetuation of intense dislike, serious contempt or ridicule against a person or group. Industry groups develop and periodically review these codes, which the ACMA will only register if it is satisfied that they continue to provide appropriate safeguards for the community.

Broadcasting services are also subject to licence conditions that prescribe the services cannot be used in the commission of an offence under Commonwealth, state or territory laws. There is a further licence condition on some broadcasting services preventing the broadcast of programs that have been refused classification ('RC') or classified X18+ by the Classification Board (which includes very high impact violence, terrorist material and the promotion of crime).

The ACMA adopts a graduated and strategic risk-based approach to compliance and enforcement, using a range of options available for dealing with breaches of the rules established by legislation, standards and codes of practice.

## ***The ACMA administers Anti-terrorism Standards on narrowcast TV services***

As part of our role, the ACMA also administers the [Broadcasting Services \(Anti-terrorism Requirements for Subscription Television Narrowcasting Services\) Standard 2011](#) and the [Broadcasting Services \(Anti-terrorism Requirements for Open Narrowcasting Television Services\) Standard 2011](#) (the Anti-terrorism Standards).

The Anti-terrorism Standards prohibit the broadcast of programs on subscription and open narrowcast television that advocate the doing of a terrorist act or encourage people to join or finance listed terrorists (as defined in the Standards). Both Anti-terrorism Standards are due to sunset on 1 October 2021 and the ACMA is currently reviewing their effectiveness and efficiency ahead of the sunset date.

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<sup>1</sup> As part of its staged process to reform media regulation towards a platform-neutral regulatory framework, the Australian Government is currently reviewing Australian classification regulation and consulting on a new Online Safety Act, which includes new schedules 5 and 7 and the ability to block abhorrent violent material.

***The ACMA performs additional roles relevant to this inquiry***

In performing its telecommunications functions or exercising its telecommunications powers, the ACMA is required to do its best to prevent telecommunications networks and facilities from being used in the commission of offences against Commonwealth laws or state and territory laws.

The ACMA has also been tasked by the Australian Government with overseeing industry development of a voluntary code of practice to address concerns related to disinformation on digital platforms. Major digital platforms are anticipated to sign up to an industry-developed code in early 2021, and the ACMA is expected to report to the government by 30 June 2021 on the adequacy of platforms' measures.

***The reach of broadcasting and online content distribution services varies***

It is important to note that the reach of broadcasting services and digital content distribution services available in Australia varies significantly and is dynamic.

Live free-to-air (FTA) broadcast television remains the most watched of any type of content in Australia.<sup>2</sup> However, time spent watching traditional television is declining, as viewers increasingly turn to online catch-up services and subscription or pay-as-you-go streaming services to access content. The ACMA's *Communications report 2018–19* highlighted that 90% of Australians accessed the internet during the reporting period, with 83% accessing video content online and 65% listening to audio content such as internet radio, music streaming services or podcasts.<sup>3</sup>

Regulatory interventions designed to curb the influence of radicalism and extremist groups on broadcast, online and telecommunications services will need to be responsive and flexible to accommodate these dynamics.

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<sup>2</sup> Australian Communications and Media Authority, *Communications report 2018–19*, p. 89.

<sup>3</sup> *ibid*, p. 5–6.

# Regulation of broadcasting and narrowcasting services

In carrying out its functions, the ACMA administers rules set out in the BSA and subordinate instruments<sup>4</sup>, which regulate matters relevant to the inquiry's terms of reference.

The ACMA undertakes the following roles of relevance to this inquiry:

- > overseeing and enforcing the co-regulatory broadcasting scheme underpinned by industry codes of practice that include requirements for violent material to be appropriately classified
- > enforcing licence conditions as set out in Schedule 2 to the BSA
- > administering the Anti-terrorism Standards applicable to subscription and open narrowcast services.

Our submission outlines these roles and provides additional information to assist the Committee in its deliberations.

## The ACMA's role in overseeing broadcasting codes of practice and licence conditions

Under section 123 of the BSA, representative industry groups develop codes of practice in consultation with the ACMA. Once registered by the ACMA, and therefore considered to provide appropriate community safeguards, broadcast television and radio sectors must comply with their respective codes. The purpose of the codes is to establish specific obligations in relation to programming content, complaints-handling and the classification and placement of programs.

The codes are periodically reviewed to ensure they are meeting the community's expectations in providing appropriate safeguards.

In the case of the national broadcasters, their codes are notified to the ACMA after finalisation by the broadcaster, under section 8 of the *Australian Broadcasting Corporation Act 1983* or section 10 of the *Special Broadcasting Services Act 1991*.

### Classification

Under all television codes of practice, violent content must be appropriately classified (for example, PG, M, MA15+) and under the commercial television code, must also be appropriately scheduled according to specified time-zones.

### Other relevant code-based obligations

News material is not subject to classification. The commercial television code instead requires the exercise of care in selecting material for broadcast, having regard to the likely audience and any identifiable public interest reason for presenting the material.

Commercial and subscription television codes of practice proscribe the broadcast of content that is likely, in all the circumstances, to provoke or perpetuate intense dislike, serious contempt or severe ridicule against a person or group of people because of

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<sup>4</sup> These include the Broadcasting Services Local Programming Determination 2018, the Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014, the Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014 and the Broadcasting Services (Meaning of Local) Instrument 2018.

age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference.

The SBS code notes that SBS will avoid content that clearly condones, tolerates, or encourages discrimination, taking into account the context in which the material is presented, and the impression created by the schedule over time. The ABC Code includes a standard about avoiding the unjustified use of stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice.

As discussed further below, the ACMA's investigation into broadcast footage of the Christchurch attack resulted in a number of findings about improvements that could be made to codes of practice and industry guidelines that govern the treatment of high impact material, including the use of warnings and the exercise of care in repeated broadcasts of the footage.

### **Licence conditions for broadcast and narrowcast services**

In addition to industry codes of practice, broadcast and narrowcast services are also subject to a range of licence conditions that are set out under Schedule 2 to the BSA and administered by the ACMA. Licence conditions relevant to this inquiry include:

- > a requirement that a person will not use a broadcasting service in the commission of an offence against another Act or state or territory law<sup>5</sup>
- > a prohibition on some broadcasting services on the broadcast of programs that have been refused classification ('RC') or classified X18+ by the Classification Board.

### **Compliance and enforcement**

The ACMA adopts a graduated and strategic risk-based approach to [compliance and enforcement](#); meaning that breaches will be dealt with effectively and efficiently, while recognising the role of co-regulation and engaging with the regulated community to promote voluntary and informal compliance mechanisms as appropriate.

There are a range of compliance and enforcement options available to the ACMA if a breach of a licence condition, program standard or a code is identified. The ACMA takes regulatory action commensurate with the seriousness of the breach and the level of harm; for example, accepting enforceable undertakings and imposing additional licence conditions on licensees. In relation to breaches of standards or licence conditions, the ACMA also has a range of powers under the BSA, including to:

- > issue a remedial direction to the licensee, directing action to ensure that it does not breach the relevant standards in future (section 141)
- > apply to the Federal Court for an order, directing the service provider to cease providing the service (section 144)
- > apply to the Federal Court for a civil penalty order (Division 2 of Part 14B).

### **ACMA investigations**

The ACMA can investigate complaints about compliance with broadcasting and narrowcasting codes of practice, licence conditions and standards under the BSA.

Under the co-regulatory regime, the broadcaster is given the opportunity to resolve a code complaint before the ACMA becomes involved, other than in exceptional cases. If the complainant is dissatisfied with the broadcaster's response, it may be referred to the ACMA for investigation.

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<sup>5</sup> For example, terrorism-related offences in the Criminal Code and incitement to racial offences in section 20D of the *Anti-Discrimination Act 1977* (NSW).

However, the ACMA also has a broad discretion to investigate matters on its own motion under section 170 of the BSA.

Of the 6,321 broadcast complaints and enquiries received by the ACMA since 2015, 32 related to broadcast content that potentially included terrorism, extremism and hate speech material (27 of these related to the Christchurch terror attack).<sup>6</sup> Since 2015, the ACMA has finalised 11 investigations relating to terrorism, extremism and hate speech and none have resulted in a breach finding.

#### *ACMA investigation into the Christchurch terror attack*

As part of its role in overseeing broadcasting codes of practice, on 18 March 2019, the ACMA commenced an own motion investigation into coverage by Australia's commercial, national and subscription television broadcast services of the Christchurch terrorist attack. The [ACMA's investigation](#) included the review of more than 200 hours of broadcast footage, as well as analysis of information provided by broadcasters about the editorial decisions made.

The investigation found a clear public interest existed for informing Australian audiences about the terrorist attack. In these circumstances, it was appropriate to broadcast carefully and appropriately-selected excerpts of footage that was proportionate to the public interest.

The ACMA found no evidence that the full 17-minute video filmed by the alleged perpetrator was screened by any Australian television broadcaster on either their broadcast or online catch-up services or posted to their social media accounts.

Overall, it was evident that all broadcasters had regard to the relevant provisions of their respective codes of practice by extensively editing the material. The very nature of broadcast television enables the editing of material before it goes to air. This stands in stark contrast to online platforms, which are specifically designed to allow unedited material to be shared live, and where no comprehensive regulatory obligations exist concerning general community standards.

The attack also highlighted the need for broadcasters to consider the publicity-seeking purpose in live-streaming acts of violence and the potential inadvertent amplification of radical and extremist acts on broadcast services.

The ACMA made a number of findings relating to the adequacy of broadcasting codes in dealing with this type of material, including:

- > the need for extreme care when broadcasting material with high impact
- > the consistency and adequacy of viewer warnings
- > the frequent repetition within short time frames of high-impact vision
- > the need for particular care when broadcasting excerpts from perpetrator- and victim-generated content.
- > how overseas produced news content may result in the broadcast of footage that exceeds the impact of material edited for broadcast by Australian broadcasters.

The ACMA is continuing to work with government on Action Item 6.3 of the Final Report of the Australian Taskforce to Combat Terrorist and Extreme Violent Material Online. It states that the ACMA will 'consider the participation of media companies within the online crisis response protocol'. The online crisis response protocol will form

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<sup>6</sup> Reporting period is 1 July 2015 to 31 January 2021.



part of the Australian Government Crisis Management Framework designed to combat the upload and dissemination of terrorist and extreme violent material.

## **The ACMA's role in administering the Anti-terrorism Standards**

The Anti-terrorism Standards were first determined by the ACMA in March 2006 under subsection 125(2) of the *Broadcasting Services Act 1992* (the BSA). This followed an investigation into an open narrowcast television service broadcasting content that was found to contain material relating to terrorism, including the solicitation of funds for a terrorist organisation.

The Anti-terrorism Standards, as drafted, apply to subscription and open narrowcast television only.

### **Narrowcast services**

Narrowcast television services cater to specialised interests and, therefore, typically have low audiences. Sections 17 and 18 of the BSA define these services as those whose reception is limited:

- > by being targeted to special interest groups; or
- > by being intended only for limited locations; or
- > by being provided during a limited period or to cover a special event; or
- > because they provide programs of limited appeal.

Subscription narrowcast television services differ slightly in that they are only made available on the payment of fees.

When the Anti-Terrorism Standards were first determined, there was no evidence of similar concerns about content on commercial and subscription broadcast television services. These services generally have wider audiences and robust complaints-based compliance mechanisms.

Due to class licensing arrangements<sup>7</sup>, the ACMA is not aware of specific narrowcast television services currently in operation.<sup>8</sup> Over the past 10 years, the ACMA has received no valid complaints in connection with the Anti-terrorism Standards or conducted any associated investigations.

### **Prohibitions of the Anti-Terrorism Standards**

Specifically, the Anti-terrorism Standards prohibit 3 categories of content:

- > content that directly recruits a person to join, or participate in the activities of a listed terrorist
- > content that solicits funds for or assists in the collection or provision of funds for a listed terrorist
- > content that advocates the doing of a terrorist act.

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<sup>7</sup> Class licences act as a standing authority for any operator to enter the market and provide a service. They do not involve a formal licence application process or merit assessment (beyond the issue of any relevant transmitter licences). Accordingly, there is relatively less visibility and oversight of the operations of individual licensees as compared to other classes of broadcasting service.

<sup>8</sup> The ACMA is aware of 7 open narrowcasters that hold current high-power open narrowcast television apparatus licences as of March 2020.

The Anti-terrorism Standards apply to a listed terrorist organisation within the meaning of section 102.1 of the *Criminal Code Act 1995 (Cth)* (the Criminal Code), or a proscribed person or entity listed in the Gazette by the Minister for Foreign Affairs pursuant to section 15 of the *Charter of the United Nations Act 1945*.

Additionally, a 'terrorist act' under the Anti-terrorism Standards has the meaning given by section 100.1 of the Criminal Code, regardless of where the action occurs, the threat of action is made or the action, if carried out, would occur.

There is a general exclusion for content that is included as part of a bona fide news, current affairs or documentary report or comment on a matter of public interest, debate, entertainment, or satire, or that merely provides information about the beliefs or opinions of a listed terrorist.

The Anti-terrorism Standards were remade in 2008 and 2011 with minor amendments. The first change in 2008 followed a recommendation by the Senate Standing Committee on Regulations and Ordinances that the term 'terrorist organisation' be replaced with the term 'listed terrorist'. The instruments were again amended in 2011 to prohibit the broadcast of a program that advocates the doing of a terrorist act, in alignment with the Criminal Code and the *Classification (Publications, Films and Computer Games) Act 1995*.

Compliance with the Anti-terrorism Standards is a licence condition for subscription and open narrowcasting television services as per Part 7 of Schedule 2 to the BSA.

As noted above, the Anti-terrorism Standards are due to sunset on 1 October 2021. The ACMA is required to conduct public consultation on the instruments with sufficient lead time to consider whether the instruments should be remade before their sunset date. The Standards may be amended as necessary in the future, should there be regulatory reform in the context of this inquiry. The ACMA will continue to consult with other Commonwealth agencies on the effectiveness and efficiency of the instruments, and the outcomes of these discussions will be considered as part of the broader consultation process.

# Additional ACMA functions relevant to the inquiry

As the media and communications regulator, the ACMA also assumes additional roles of relevance to this inquiry including:

- > regulating telecommunications networks and facilities
- > undertaking further roles and functions as requested by government.

## The ACMA's role in regulating telecommunications networks and facilities

Section 474.14 of the Criminal Code makes it an offence to use a telecommunications network with intention to commit a serious offence against a law of the Commonwealth, state or territory or a foreign law. Further, section 474.17 prohibits using a carriage service in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive. The penalty is 3 years imprisonment.

The ACMA, in performing its telecommunications functions or exercising its telecommunications powers, is also required to do its best to prevent telecommunications networks and facilities from being used in the commission of offences against Commonwealth laws or state and territory laws.<sup>9</sup>

For example, the ACMA consults with the Department of Home Affairs and the Office of the Communication Access Coordinator (OCAC) on carrier licence applications to consider whether there are any security issues in granting licences. We also administer the [Telecommunications \(Service Provider – Identity Checks for prepaid Mobile Carriage Services\) Determination 2017](#), which sets out the regulatory framework for the supply of prepaid mobile services and supports the obligation on mobile providers to prevent their networks or facilities from being used to facilitate the commission of offences. The ACMA also investigates referrals from OCAC of any telco providers suspected of not doing enough to protect their networks.

Sections 313 and 581 of the *Telecommunications Act 1997* require carriers and carriage service providers to provide authorities such as the Australian Federal Police, eSafety and the ACMA such help as is reasonably necessary to enforce criminal law and safeguard national security. Where carriers and carriage service providers act in good faith to comply with a direction – for example, to suspend the supply of an internet service, they will be protected from any potential action for damages.

## The ACMA's role in overseeing the development of an industry code for misinformation and news quality

Following the release of the Australian Government's [response and implementation roadmap](#) to the Australian Competition and Consumer Commission's (ACCC) final report of its Digital Platforms Inquiry, the ACMA was tasked with overseeing the development of a voluntary code of practice for online disinformation and news quality.

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<sup>9</sup> Section 312 of the *Telecommunications Act 1997*.

The ACMA released a [position paper](#) in June 2020 to guide digital platforms on the code development process. A [draft code](#) was developed and released for public consultation in late 2020 by DIGI, an industry association that advocates on behalf of the digital industry in Australia.

This code is designed to address the propagation of disinformation on digital platforms. It aims to:

- > provide safeguards against harms that may arise from disinformation
- > disrupt advertising and monetary incentives for disinformation
- > increase transparency over measures taken to combat disinformation
- > empower consumers to make better informed choices of digital content.

The ACMA has been working with DIGI and all major digital platforms in Australia throughout the code development process. The ACMA expects the new code to be in place by the end of February 2021 and is required to report back to government by June 2021 on the adequacy of platforms' measures and the broader impacts of disinformation in Australia.

The government has indicated that if the voluntary actions and responses of the platforms are found to not be sufficiently responding to the concerns identified by the ACCC, the government would consider the need for further measures at that time.

Digital platforms also have a range of existing policies and community guidelines which apply to content shared by radical and extremist groups, or content that acts as a conduit for individuals on a pathway to extremism or radicalisation. The ACMA does not have a legislated role in monitoring or overseeing such policies or guidelines, except where they intersect with measures to address the propagation of disinformation on digital platforms.