

Senate Environment and Communications Legislation Committee inquiry
into Communications Legislation Amendment (Combatting Misinformation and
Disinformation) Bill 2024 [Provisions]

Questions on Notice

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.

Division/Agency Name: Australian Communications and Media Authority

Topic: Monitoring and compliance under the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*

Name asked: Senator Karen Grogan

3. If the bill is passed, how would the ACMA encourage digital communications platforms to comply with their obligations? How would the ACMA communicate its role to digital platforms, and the general public?

Answer:

If the bill is passed, how would the ACMA encourage digital communications platforms to comply with their obligations?

If the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024* (the Bill) is passed, the Australian Communications and Media Authority (ACMA) would work with digital communications platforms to encourage compliance. To this end, there would be an initial focus on publishing guidance about:

- the potential scope of providers and services captured under the legislation
- the ACMA's expectations for compliance with the transparency obligations (publication of mis and disinformation policies, media literacy plans, risk assessment and data access for researchers) which will commence 6 months after Royal Assent
- the ACMA's proposed approach to using information gathering powers where appropriate to support our functions and seek information or documents about:
 - misinformation or disinformation on platforms, or
 - measures implemented by the provider to prevent or respond to misinformation or disinformation on a platform, including the effectiveness of measures
- the ACMA's proposed approach to compliance and enforcement for non-compliance with the Bill.
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The ACMA may also signal its position on making Digital Platform Rules under Division 2.

The ACMA has been working with and intends to continue to work with the Digital Industry Group Inc (DIGI) and signatories to the voluntary Australian Code of Practice on Disinformation and Misinformation (ACPDM) to encourage digital communications platforms to improve their transparency reporting under the ACPDM. This will include working with DIGI and code signatories to adopt new pilot metrics to improve the consistency and comparability of reporting between platforms. If voluntary reporting does

not improve, the ACMA could use formal information gathering powers under the legislation to collect data, regardless of whether they have signed up to the ACPDM or not.

The ACMA has been clear that we want to incentivise uptake and compliance with the ACPDM. An effective, transparent and heavily subscribed voluntary code would demonstrate to the ACMA that sections of the digital platform industry are taking misinformation and disinformation seriously. Where this is not the case, the ACMA could consider, on the basis of platform data and evidence, whether a mandatory code may be needed to provide adequate community protection..

How would the ACMA communicate its role to digital platforms, and the general public?

If the Bill is passed, the Australian Communications and Media Authority (ACMA) would communicate its role to digital platforms through guidance (see the first part of the response above) and direct engagement. We would communicate with the public through the publication of information on our website and would consider whether a broader consumer awareness and education program is needed .

Information would also be available to both digital platforms and the general public through the publication of the required annual report (under clause 69), which would include information on the exercise of our obligations.

Division/Agency Name: Australian Communications and Media Authority

Topic: Monitoring and compliance under the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*

Name asked: Senator Karen Grogan

4. What specific steps would the ACMA take to monitor digital platforms' compliance with the bill if passed? How would the ACMA assess the effectiveness of the systems and processes that digital platforms have in place for responding to misinformation and disinformation?

Answer:

What specific steps would the ACMA take to monitor digital platforms' compliance with the bill if passed?

The ACMA has been monitoring industry compliance with the ACPDM since 2021, primarily through reporting to government the adequacy of the code and signatory transparency reports and other analysis, including through our own commissioned research. Our analysis has highlighted the need for improved quantitative reporting, measurable key performance indicators from platforms and the use of consistent Australian-specific data points.

Should the Bill be passed, an initial method of monitoring compliance will be informed by the industry compliance with and reporting the mandatory obligations under the Bill, namely the transparency obligations under Division 2 of the Bill.

From 6 months, the ACMA would engage in a range of activities to monitor compliance, including desktop audits of published information, meeting with providers or using information gathering powers to compel information where it is not voluntarily or publicly provided.

How would the ACMA assess the effectiveness of the systems and processes that digital platforms have in place for responding to misinformation and disinformation?

A combination of data would be used to support the Australian Communications and Media Authority (ACMA) to assess the effectiveness of the systems and processes that platforms have in place to respond to misinformation and disinformation. Data that digital communications platforms publish under Division 2 (like the outcomes of risk assessment reports, their policies on misinformation, disinformation and researcher data access, media literacy plans, complaints data), records kept and reported on under Division 3 (like data on the systems, processes and measures they take to address misinformation or disinformation, data on the total number of complaints about misinformation or disinformation or data on the total number of pieces of content that violated misinformation and disinformation policies) as well as independent research enabled under

Subdivision BA could support the ACMA to form a view about a platform's systems and processes.

Division/Agency Name: Australian Communications and Media Authority

Topic: Process to request a code under the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*

Name asked: Senator Karen Grogan

5. How would the ACMA determine that industry efforts are deemed inadequate before requesting that an industry code is necessary to address misinformation and disinformation? What criteria would the ACMA use to evaluate that a code is necessary?

Answer:

How would the ACMA determine that industry efforts are deemed inadequate before requesting that an industry code is necessary to address misinformation and disinformation?

The practical considerations that may lead the Australian Communications and Media Authority (ACMA) to deem that a request for a misinformation code was necessary may include if:

- the voluntary Australian Code of Practice on Disinformation and Misinformation does not include participation from platforms that have large Australian user bases or does not include effective reporting or governance arrangements.
- data that platforms publish under Division 2 of the Bill, including the outcomes of risk assessments, points to deficiencies that may require measures to be put in place so that platforms provide adequate protection for the Australian community from serious harm.
- complaints data published under Digital Platform Rules developed under clause 25 indicates that concerns about misinformation or disinformation are not being addressed.
- independent research enabled under Subdivision BA of the Bill, as well as the ACMA's commissioned research, points to ongoing community concern about misinformation or disinformation on digital communications platforms in a section of the digital platform industry.
- records kept and reported on under Division 3 of the Bill reveal data that individuals that the total number of pieces of content violating platform misinformation and disinformation policies is increasing.

What criteria would the ACMA use to evaluate that a code is necessary?

The criteria that must be met for the ACMA to evaluate that a code is necessary are outlined under clause 48 of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024. The criteria that must be met under clause 48 are:

- that a code is necessary in order to prevent or respond to misinformation or disinformation on digital communications platforms of participants in a section of the digital platform industry (paragraph 48(3)(a))

- that a code is necessary to address systemic issues in relation to misinformation or disinformation on digital communications platforms of participants in a section of the digital platform industry (paragraph 48(3)(a))
- that the ACMA is satisfied that, in the absence of a request, it is unlikely that a code would be developed within a reasonable period (paragraph 48(3)(b)).

The practical considerations (outlined in the first part of this answer) would support the ACMA to form an evidence-base around whether the criteria set out in clause 48 could be met.

If the conditions to request a code are met, clause 48 also sets out that the ACMA must:

- write a notice to a body or association that it is satisfied represents a particular section of the digital platform industry to develop a code that applies to its participants and deals with one or more specified matters relating to the operation of digital communications platforms by those participants (paragraph 48(1)(a))
- make sure that a written notice provides at least 120 days for the body or association to develop a code (paragraph 48(1)(b) and subclause 48(2))
- make sure that the notice includes any indicative targets for achieving progress in the development of a code (subclause 48(1)(6)).

Division/Agency Name: Australian Communications and Media Authority

Topic: Code approval process under the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

Name asked: Senator Karen Grogan

6. What factors would the ACMA consider when deciding whether to approve or reject a code developed by the digital platforms industry, or sections of the industry?

Answer:

There are several parameters in the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024* (the Bill) that step out the factors the Australian Communications and Media Authority (ACMA) must consider when deciding whether to approve or reject a mandatory misinformation code.

- The code must be consistent with the objects of the Bill (clause 11).
- A code must not contain requirements on participants of the digital platform industry relating to the content of private messages or the encryption of private messages or requirements relating to VOIP communications (clause 45 and clause 46).
- The ACMA needs to be satisfied that an industry body or association that has developed a code represents the relevant section of the digital platform industry that the code applies to (paragraph 47(1)(a)).
- The code needs to deal with one or more matters relating to the operation of digital communications platforms by participants of the relevant section of the industry (paragraph 47(1)(b)).
- The code has to require participants of the section of the digital platform industry to implement measures to prevent or respond to misinformation or disinformation on the platforms (paragraph 47(1)(d)(i)).
- The ACMA needs to be able to assess compliance with the measures in a code (paragraph 47(1)(d)(ii)).
- The code must be reasonably appropriate and adapted to achieving the purpose of providing adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on the platforms, and must go no further than reasonably necessary to provide that protection (paragraphs 47(1)(d)(iii)-(iv)).
- The ACMA must be satisfied that the body or association that drafted the code had invited members of the relevant section of the digital platform industry and members of the public to make submissions over a minimum 30 day period, and that any submissions had been considered (paragraphs 47(1)(e)(i)-(ii) and paragraphs 47(1)(f)(i)-(ii)).

- The ACMA must be satisfied that at least one body or association representing the interests of consumers had been consulted in the development of the code (paragraph 47(1)(g)).
- The code cannot be inconsistent with requirements set out in a Digital Platform Rule (clause 66).
- The ACMA must be sure that nothing in the code contains any requirements on digital communications platform providers to take any action that would remove misinformation or prevent an end-user from using a platform because they engaged in creating or sharing misinformation (clause 67).
- The ACMA would need to consider the compatibility of the code with human rights obligations in its role as the rule-maker for any code that is registered on the Federal Register of Legislation.