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Chair and Agency Head

Committee Secretary
Select Committee on Foreign Interference through Social Media
Department of the Senate
PO Box 6100
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Dear Secretary

ACMA submission to the Select Committee on Foreign Interference through Social Media (2023)

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. The ACMA's remit also includes aspects of online content regulation; relevantly, the ACMA monitors digital platforms' activities under the voluntary [Australian Code of Practice on Disinformation and Misinformation](#) (the Code), including in response to coordinated campaigns by foreign actors.

In January 2023, the Government announced that it will shortly consult on new legislation that will provide the ACMA with new regulatory powers to formally oversee digital platform activities relating to mis- and disinformation.

Separately, as part of our broadcasting remit, we are also required to maintain a register of foreign stakeholders' interests in Australian media assets. This is an important transparency measure in recognition of the unique role played by the mainstream media in setting news agendas and shaping community views.

The ACMA welcomes the re-establishment of the Select Committee on Foreign Interference through Social Media, and the opportunity to provide an update on recent ACMA activities that may be of interest. This discussion builds on our [previous submission](#), provided to the former committee in March 2020.

Oversight of the Australian Code of Practice on Disinformation and Misinformation

The Code was launched by the Digital Industry Group Inc (DIGI) in February 2021. This voluntary code requires signatories to develop and report on safeguards to prevent harms that may arise from the propagation of mis- and disinformation on their services. It currently has 8 signatories: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok and Twitter.

As noted in our previous submission, the former government tasked the ACMA to oversee and report on the development of this code. The ACMA finalised its [Report to government on the adequacy of digital platforms' disinformation and news quality measures](#) in June 2021 (the ACMA's report), which was subsequently made public in March 2022. We note the former committee had recommended the publication of the ACMA's report in its December 2021 [interim report](#).

The ACMA's report assessed the likely effectiveness of self-regulation in addressing risks relating to mis- and disinformation and highlighted the limits of a voluntary Australian code in influencing global platform decision-making. We also expressed concern that the essential building blocks necessary for an effective self-regulatory regime were missing upon launch of the code. Consequently, the ACMA's report recommended that it should formally oversee the industry code, supported by new information-gathering powers, and reserve code registration and standards-making powers that could be enacted should the voluntary code fail or provide inadequate.

These recommendations have subsequently been accepted by the government. On 20 January 2023, the Minister for Communications [announced](#) the government's intent to consult on draft legislation on new regulatory powers for the ACMA in the first half of 2023, with introduction to Parliament to follow later in the year. If passed, this legislation will enable the ACMA to better assess the effectiveness of platform moderation activities – including in response to the risk of foreign information campaigns – while incentivising greater participation and performance by industry under the existing code.

Following the release of the ACMA's report, DIGI has continued to make improvements to its self-regulatory scheme. In late 2021, DIGI developed and launched new governance arrangements, including a public complaints facility, and appointed an independent reviewer to verify the information contained in signatory transparency reports. It also provided a new reporting framework to signatories, leading to an overall improvement in the quality of the May 2021 reports compared to the previous year.

In December 2022, DIGI concluded its initial review of the Code and released an updated version. The amendments address elements of the ACMA's concerns, including broadening the definition of harm, new transparency commitments around the use of recommender systems, and the ability for greater participation by a wider range of industry participants – including companies offering digital advertising services or technology solutions to address mis- and disinformation.

While developments to improve the voluntary scheme are welcomed, we remain concerned by insufficient reporting on the part of signatories on the effectiveness of their nominated measures, the exclusion of messaging platforms with large-scale group chat functionality, and the general lack of enforceability of the scheme. We are continuing to provide code-related advice to the government, as well as DIGI and the digital platform industry, ahead of the anticipated legislative changes.

ACMA research into mis- and disinformation

As part of the ACMA's broader oversight role, we undertook an examination into the prevalence and impacts of online mis- and disinformation in Australia, which formed the basis of an environment assessment in our June 2021 report.

This included commissioned research from the University of Canberra's News and Media Research Centre (N&MRC) on Australians' experiences with COVID- 19 misinformation, which showed high levels of exposure to false and harmful narratives about the pandemic among users of digital platforms.

The ACMA also commissioned a study by social media analytics firm, We Are Social, into the spread of misinformation narratives within online Australian conspiratorial communities throughout 2020-21. This research found that, at the time, many of the most popular misinformation narratives circulating across public social media conversations in Australia had an international dimension. Conspiracy theories originating out of the US, like QAnon, were being widely

adapted and applied in a local context, often linked to wider conspiracies concerning COVID-19 or the emergence of a 'new world order'. An analysis of local online conspiratorial communities showed that many of the moderators behind these groups appeared not to be Australian.

Further, the ACMA report highlighted some known examples of inorganic engagement and amplification of falsehoods relating to locally relevant news stories, hinting at the presence of disinformation campaigns targeting Australians.

The ACMA is continuing to undertake research to better understand the various dimensions of this problem. In late 2022, in collaboration with other digital platform regulators, we commenced a project examining Australians' experiences with accessing the reporting and complaints processes of major digital platforms, including in response to mis- and disinformation. We expect to publish the results of this research in the coming months.

International responses to online mis- and disinformation

In response to the terms of reference, the ACMA is aware of several international developments relating to the regulation of mis- and disinformation that may be of interest to this inquiry.

As part of its European Democracy Action Plan, the European Commission (EC) has developed an EU-wide [strategy to combat disinformation](#) and ensure the protection of European values and democratic systems.

A key component of this work is the voluntary industry [Code of Practice on Disinformation](#). First established in 2018, the code was updated and strengthened in June 2022, increasing the number and scope of signatories while also broadening the range of commitments to counter disinformation.

In addition to the voluntary code, online disinformation in Europe is also regulated through the recently approved [Digital Services Act](#) (DSA). The DSA updates and harmonises the legal framework for regulating illegal content – including disinformation – on digital intermediaries across the EU. It requires all online platforms with more than 45 million European users (known as Very Large Online Platforms, or VLOPs) to have measures in place to mitigate risks from the spread of illegal content.

In addition to Europe-wide initiatives, France has specific domestic laws designed to protect French citizens against the manipulation of information. Commencing in 2018, these laws require large online platform operators to report annually to the French audio-visual and digital communication regulator, Arcom, on the processes they have put in place to address misinformation. Separately, these laws allow Arcom to suspend, interrupt, or refuse broadcasting of a television channel that is proven to be propagating false information that could influence an election while under the influence of a foreign state. In 2021, France also created a national agency, Viginum, to combat information manipulation in elections.

Outside of Europe, the UK Parliament is currently debating the [Online Safety Bill](#) (OSB). The bill is designed to protect children and adults online by making social media companies more responsible for their users' safety on their platforms. The bill will require platforms to take action against all illegal content including, upon passage of the National Security Bill, state-sponsored disinformation campaigns. The OSB also requires the UK communications regulator, Ofcom, to establish an advisory committee to examine issues relating to mis- and disinformation.

Additionally, the UK Government has been pro-active in responding to risks posed by online mis- and disinformation linked to COVID-19. In the early stages of the pandemic, the Department for Digital, Culture, Media and Sport (DCMS) stood up a cross-government Counter Disinformation Unit to monitor and respond to false information about coronavirus circulating online. Additionally, DCMS launched a Counter Disinformation Policy Forum to regularly engage with industry and NGOs on information flows and develop responses to COVID-19 and other crisis scenarios.

Stakeholder engagement and cross-government coordination

The challenge of protecting Australians from online harms, including mis- and disinformation, is complex and multi-faceted. The topic touches on a range of interconnecting issues and regulatory frameworks including user privacy, data protection, defamation, consumer protection, online safety, and the broader online information environment.

To facilitate better coordination across government on digital platform regulation, the ACMA – along with the Australian Competition and Consumer Commission, the Office of the eSafety Commissioner, and the Office of the Australian Information Commissioner – formed the Digital Platform Regulators Forum (DP-REG) in early 2022.

DP-REG brings together considerable expertise on regulation of social media companies and provides a forum to help share information and work together jointly on cross-cutting regulatory issues. [DP-REG's strategic priorities for 2022/23](#) include a focus on the impact of algorithms, efforts to improve transparency of digital platforms' activities and how they are protecting users from potential harm (including from mis- and disinformation), and increased collaboration and capacity building between the 4 members.

We are also working closely with our portfolio department on the development of new regulatory powers for the ACMA. It also regularly engages with other agencies on mis- and disinformation issues, including the Department of Home Affairs and the Department of Foreign Affairs and Trade.

As part of our role monitoring platform activities and international regulatory developments, we also regularly engage with DIGI, code signatories and other operators of digital platform services, as well as leading academics and subject-matter experts, NGOs and international peers.

Mitigations against foreign interference in Australian media environment

Unlike social media and other digital platforms, there are existing regulatory protections in place which mitigate the risk of foreign interference across the Australian media environment.

Content that is broadcast on either radio or television in Australia is subject to one of several broadcasting industry codes, all of which are registered by the ACMA and contain safeguards around the accuracy of news and current affairs reporting.

In July 2022, the ACMA found the Melbourne community radio station 3ZZZ to be in [breach](#) of the accuracy provisions in the *Community Radio Broadcasting Codes of Practice 2008* for airing a Russian language program that contained inaccurate statements about both the conflict in Ukraine and the sovereignty and independence of the Donetsk and Luhansk regions. In late 2022, 3ZZZ entered into a [court-enforceable undertaking](#) requiring it to provide further training to all relevant staff and volunteers, and to establish systems, processes and practices for the identification of geo-political matters and environmental sensitivities of a serious nature.

While there was no indication of foreign interference in relation to this matter, the broadcasting code provisions, coupled with broader awareness raising and engagement with industry by the ACMA, helped to prevent further false narratives about the activities of the Russian Federation from being propagated via Australian broadcasting services. Most Australian media outlets were responsive to the heightened risk of inaccurate reporting from state-affiliated media, with SBS and Foxtel taking preventative steps to suspend the broadcast of news content from Russia Today and NTV Moscow.

Legislative protections also exist so that any foreign acquisition of Australian media businesses – including daily newspapers and websites – do not pose a national security concern. The *Foreign Acquisitions and Takeovers Regulation 2015* provides that a foreign person acquiring an interest of at least 5% in an entity or business that wholly or partly carries on an Australian media business is a 'significant action' and a 'notifiable action' under the *Foreign Acquisitions and Takeovers Act 1975*. In effect, this means that investments by foreign persons in excess of 5% in an Australian media business must be notified to, and approved by, the Treasurer.

Additionally, under the *Broadcasting Services Act 1992*, the ACMA is required to maintain the Foreign Ownership of Media Assets (FOMA) Register – a register of foreign stakeholders who have company interests of 2.5% or more in Australian media companies. Established in 2017, this Register was designed to improve public transparency over the levels and sources of foreign investment in commercial radio and commercial television broadcasting, and the more influential newspapers, in recognition of the unique ability of those media sources to set the news agenda and shape public debate. The FOMA Register does not include online media sources, including social media, although many Australian media companies that are on the Register have an active presence in online and social media.

As at January 2023, there were 67 foreign stakeholders listed on the FOMA Register, holding interests in 147 Australian media companies. The ACMA recently concluded a statutory review into the FOMA scheme, which is currently with the government and is expected to be tabled in March.

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

Yours sincerely

Nerida O'Loughlin PSM
14 February 2023