

UPDATE

Announcements Drive the Online Reform Agenda for 2020

Two important announcements made shortly before Christmas 2019 have set the agenda for regulatory reform impacting online platforms and content services in 2020.

On 11 December 2019 the Minister for Communications, the Hon. Paul Fletcher MP, announced the government's intention to introduce a new Online Safety Act incorporating significant changes to the regulation of online content in Australia. On 12 December 2020, the Prime Minister, the Hon. Scott Morrison MP, the Treasurer, the Hon. Mr Frydenberg MP, the Attorney-General, the Hon. Christian Porter MP and the Communications Minister announced the Government Response and Implementation Roadmap for the Digital Platforms Inquiry.

The eSafety reforms

A new Online Safety Act will regulate online content. The new Act will not deal with information security except to the extent that online content may be part of a scam or otherwise misleading. It will replace the *Enhancing Online Safety Act 2015* and "migrate elements" of Schedule 7 of the *Broadcasting Services Act 1992 (BSA)*. New Act will:

- regulate ISPs and Social media.
- cover Cyberbullying, Image based abuse and new cyber abuse scheme for adults: "menacing, harassing or offensive".
- support new industry codes on harmful content: Class 1 and Class 2 content:
 - Class 1 subject to take down, Ancillary provider scheme and blocking powers (including sexual abuse, AVM and incitement to violence).
 - Class 2 subject to Mandatory code, not to be hosted, children not to access by "best available technology" (RC, X18+, MA15+).
- "allow action" on harmful content "wherever it is hosted".

The eSafety Commissioner will have new powers to state "new basic online safety expectations" and require the delivery of "transparency reports" regarding whether expectations have been met. The Commissioner will also have "clear and unambiguous" power to block content in a crisis and to issue notices to "ancillary service providers" to support "de-ranking and removal" of offensive content. There will be a new mandatory 24-hour takedown scheme taking over most elements of Schedule 7 of the BSA but without the "time consuming" classification process. It is proposed to develop and support "opt-in tools and services" to prevent online harms.

The Discussion Paper, a Facts Sheet and information about how to make a submission can be found [here](#). Submissions are requested on or before 19 February 2019.

Response and "implementation roadmap" to the Platform's inquiry

New regulation of online platforms

A new "Special Unit" in the Australian Competition and Consumer Commission (ACCC) to monitor and report on online platforms. The government has allocated an additional \$27 million over 4 years to fund the Special Unit. "Designated platforms" will be required to work with the ACCC to develop voluntary codes of conduct to address bargaining power imbalances between digital

platforms and media businesses. A binding online privacy code is to be developed by the Office of the Australian Information Commissioner (**OAIC**) that will require more transparency about data sharing and meet “best practice consent” requirements for collection, use and disclosure of personal information. The code will empower users to stop use or disclosure of their personal information and contain provisions aimed at protecting children and other vulnerable groups.

There will be a voluntary code or code of conduct aimed at addressing disinformation and improving news quality. The voluntary code is to be developed by major digital platforms under ACMA to oversight and a report on the adequacy of the measures to be delivered to the government by June 2021. There will also be a pilot dispute resolution scheme for disputes between digital platforms, consumers and small business. The operation of this scheme will inform the government on whether it is necessary to proceed to create a Digital Platforms Ombudsman. In response to ACCC recommendations regarding the possibility that strategic acquisitions by large digital platforms will reduce competition, large platforms will be required to work with the ACCC to develop a voluntary notification protocol in advance of potential acquisitions.

Privacy law reforms

The government has decided to proceed with significant changes to the *Privacy Act 1988* (**Privacy Act**) including a new wider definition of “personal information” to cover online identifiers, “strengthen[ed]” notification requirements (but avoiding “notification fatigue”). “strengthen[ed]” consent requirements (but avoiding “consent fatigue”) and to introduce a direct right of action by individuals for breaches of the Privacy Act. Increased penalties for breaches of Privacy Act will be introduced in 2020. The OAIC will develop a mandatory online privacy code for major online platforms (see above). The government will also conduct a broad review of the Privacy Act and related legislation to consider whether broader reform is necessary to empower and protect consumers in the medium term. In particular, the review will consider the possibility of introducing a consumer right to have personal information erased by a regulated entity and whether there should be a statutory tort of invasion of privacy.

Further policy development on media reforms

The government plans to commence a staged process to create a platform-neutral media regulatory framework including to consult on a uniform classification framework, a uniform Australian content obligation and to conduct a review of “other aspects” of the policy framework to support Australian film. The government has expressed support for stable funding of the national broadcasters and regional journalism and for increasing digital media literacy in the community and schools.

Ongoing investigation and consideration

Several issues will be subject to further investigation and consideration. There will be public consultation regarding the changes to the merger law recommended by the ACCC, monitoring of developments in Europe regarding consumer choice of browsers and search engine. The ACCC digital platforms branch will investigate the market for supply of ad tech services and advertising agencies.

You can find the detailed government response [here](#).

Please contact me if you have any questions regarding these developments

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