

Australia welcomes the new digital age

Allan Yeoman, Amy Ryburn, Philip Wood, Renee Stiles, Alex Chapman, Damien Steel-Baker, Keri Johansson

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The Australian Government late last year announced its roadmap for reform to better regulate online social engines, social media and digital content aggregators (Digital Platforms) in Australia, such as Facebook. This follows on from the 18-month Digital Platforms Inquiry (Inquiry) conducted by the Australian Competition and Consumer Commission (ACCC). As part of the Inquiry:

- The ACCC found that Digital Platforms have resulted in a fundamental change for the production, distribution and consumption of media content
- The ACCC issued 23 recommendations to the Australian Government to address various technology, competition, consumer, privacy and media regulation issues relating to the dominance of Digital Platforms in Australia.

In response to the recommendations, the Australian Government announced on 12 December 2019 its commitment to undertake a number of actions – the more immediate of which include:

- Establish a special branch of the ACCC, which will receive \$27m over four years. This branch will monitor and biannually report on Digital Platforms, take enforcement actions (where necessary) and, under the direction of the Treasurer, conduct inquiries. The first inquiry of this branch will be looking into competition for the supply for ad-tech services and the supply of online advertising by advertising/ media agencies
- Facilitating the development of a voluntary code of conduct to address bargaining power concerns between Digital Platforms and media businesses which will be overseen by the Australian Communications and Media Authority – the code or codes will be finalised no later than November 2020
- Develop a pilot external dispute resolution scheme (which will inform whether to establish a Digital Platforms Ombudsman)
- Implement a staged process to reform media regulation which includes developing a platform-neutral regulatory framework to cover both online and offline media content delivery to Australian consumers
- Commence a review of the Australian Privacy Act 1988 (Cth) (Australian Privacy Act) to ensure that it empowers consumers, protects their personal information and best serves the Australian economy.

At the same time, the Australian Government has also indicated that it will release a draft version of a Bill to update the Australian Privacy Act for public consultation in 2020. It was announced in March last year that the relevant updates to the Australian Privacy Act will include:

- Increased maximum penalties for serious or repeated interferences with privacy (which could be up to \$10m, three times the value of the benefit obligation through misuse of information or 10% of annual turnover – whichever is the greater)
- The ability of the Office of the Australian Information Commissioner (OAIC) to issue infringement notices for failure to cooperate with efforts to resolve minor breaches
- The introduction of protections for vulnerable groups, such as children
- Expanding the powers of the OAIC through allow third parties to review breaches and publish notices about the breaches whilst also ensuring that impacted individuals are informed
- The ability of users to ensure that their personal information is not being used or disclosed by social media and/or online platforms.

The Australian Government has indicated in its response to the Inquiry that as well as under taking a review to ensure it empowers consumers, the Government will seek input on amending the definition of personal information in the Australian Privacy Act to include technical data and other online identifiers.

The Australian Government's proposals for Digital Platforms are wide-ranging and, while they are still in the early stages, New Zealand businesses (particularly those with a digital footprint in Australia) would be wise to follow developments in 2020.

This article was written by Amy Ryburn (partner), Alex Chapman (senior associate) and Jack Stephens (solicitor).

Auckland

**188 Quay Street
Auckland 1010**

**PO Box 1433
Auckland 1140
New Zealand**

P: +64 9 358 2555

F: +64 9 358 2055

Wellington

**Aon Centre
1 Willis Street
Wellington 6011**

**PO Box 2694
Wellington 6140
New Zealand**

P: +64 4 499 4242

F: +64 4 499 4141

Christchurch

**83 Victoria Street
Christchurch 8013**

**PO Box 322
Christchurch 8140
New Zealand**

P: +64 3 379 1747

F: +64 3 379 5659