

GOVERNMENT'S RESPONSE TO THE DPI – A ROADMAP FOR REFORM IN THE DIGITAL AGE

INTRODUCTION

On 12 December 2019 the Australian Government released a roadmap for a program of work and series of reforms to promote competition and enhance consumer protection and privacy in a digital age.¹

The roadmap is in response to the ACCC's July 2019 Digital Platforms Inquiry Final Report (DPI Report).²

The Government has shown its support, or support in principle, for most of the 23 recommendations that the ACCC made in the DPI Report, with only a small handful not supported. But even those are not rejected outright.

Not surprisingly, digital platforms are the focus of the Government's confirmed reforms, with the Government announcing an immediate commitment to:

- + Support DPI Report Recommendation 4 - by allocating \$27 million over the next 4 years to establish a new Digital Platforms Branch of the ACCC to monitor digital platforms and undertake specific inquiries.
- + Support DPI Report Recommendation 5 - by directing such Digital Platforms Branch to commence an inquiry into the supply of adtech services and advertising agencies.
- + Support DPI Report Recommendation 7 - by requiring that designated digital platforms and news media organisations commence negotiating a voluntary code of conduct.

However, with the ACCC's recommended substantial reform to several aspects of privacy and consumer protection laws finding overall support with the Government (albeit subject to further consultation in some areas), the ramifications of the DPI Report are likely to be eventually felt economy-wide. Given the privacy and consumer protection regimes are directly relevant to most businesses, even if only a proportion of the suggested reform is implemented, it will likely impact business in all sectors, including banking, health, energy, logistics, transport, telecommunications and consumer goods.

The following table provides a summary of the Government's response and proposed actions in relation to the ACCC's recommendations.

¹ <http://www.treasury.gov.au/publication/p2019-41708>

² See our update on the DPI Report [here](#)



COMMITTED POLICY REFORMS

COMPETITION

Recommendation	Industries affected	Status & Timing
Introduction of a voluntary notification protocol for large digital platforms regarding any proposed acquisitions (Rec 2)	Large digital platforms	ACCC to develop with large digital platforms. Timing unspecified.
Creation of ACCC Digital Platforms Branch to monitor and report on the state of competition and consumer protection in digital platform markets (Rec 4)	Digital platforms	To be created in 2020
ACCC Digital Platforms Branch to lead inquiry into competition for the supply of ad tech services and the supply of online advertising by advertising and media agencies (Rec 5)	Digital platforms	Preliminary response in 2020; final response in 2021
ACCC to develop and implement voluntary codes of conduct governing relationships between digital platforms and media businesses (Rec 7); if no agreement can be made, Government will develop alternative options	Digital platforms, media	+ Progress report by ACCC due May 2020 + Codes to be finalised by Nov 2020

CONSUMER PROTECTION

Recommendation	Industries affected	Status & Timing
Government will explore models to help develop media literacy materials, prioritising students, seniors and vulnerable people (Rec 12)	Digital platforms, education, media	Preferred model in place by 2020
Inclusion of news and digital media literacy in the Government review of Australian Curriculum (Rec 13)	Digital media, education	Government to seek the inclusion in 2020
Development of pilot external dispute resolution scheme in consultation with major digital platforms, consumer groups and relevant government agencies. This will inform the decision of whether to establish a Digital Platforms Ombudsman to handle complaints (Recs 22 & 23)	Digital platforms	To be developed in 2020-2021

PRIVACY

Recommendation	Industries affected	Status & Timing
Increasing maximum civil penalties under the Privacy Act to match those of the Australian Consumer Law (ACL) (Rec 16(f))	Economy-wide – entities subject to the Privacy Act	Government to introduce legislation in 2020
Introduction of a binding online privacy code (Rec 18)	Digital platforms, social media platforms, other online platforms that trade in personal information	Government to introduce legislation in 2020

MEDIA

Recommendation	Industries affected	Status & Timing
Government will implement harmonised classification framework across online and offline media platforms with ACMA (Rec 6 Stage 1)	Digital platforms that deliver media content, content providers, broadcasting, film, media	Work to be conducted during the course of 2020
Government will enhance the Regional and Small Publishers Jobs and Innovation Package to better support the production of high quality news in regional and remote areas of Australia (Rec 10)	Media	Work to be conducted over 2020
Introduction of codes of conduct for large digital platforms to address disinformation and news quality, to be overseen by ACMA (Recs 14 & 15)	Large digital platforms, media	Work to be conducted over 2020

REFORMS FOR FURTHER CONSULTATION

COMPETITION

Recommendation	Industries affected	Status & Timing
Undertake further public consultation on changes to merger laws – amendments to s50(3) of the Competition and Consumer Act (Rec 1)	Economy-wide	Treasury to consult in 2020
Changes to Google’s search engine and internet browser defaults (Rec 3)	Google, other search engines	ACCC to monitor and report back on Google’s rollout of options in Europe – by 2021

CONSUMER PROTECTION

Recommendation	Industries affected	Status & Timing
Strengthening protections against unfair contract terms (Rec 20)	Economy-wide	To be decided in 2020
Prohibition on certain unfair trading practices (Rec 21)	Economy-wide	Consultation underway with CAANZ – to be decided in 2020

PRIVACY

Recommendation	Industries affected	Status & Timing
Amendment of the definition of “personal information” in the Privacy Act to include technical data and other online identifiers (Rec 16(a))	Economy-wide – entities subject to the Privacy Act	Government to seek input and complete review by 2020
Strengthening existing consent and notice requirements under the Privacy Act (Recs 16(b) and (c))	Economy-wide – entities subject to the Privacy Act	Government to seek input and complete review by 2020
Enabling the erasure of personal information (Rec 16(d))	Economy-wide – entities subject to the Privacy Act	Government to review as part of broader review of Privacy Act by 2021
Introduction of a direct right of action for individuals under the Privacy Act (Rec 16(e))	Economy-wide – entities subject to the Privacy Act	Government to seek input and complete review by 2020
Review the Privacy Act and consider whether a broader reform of Australian privacy laws is necessary (Rec 17)	Economy-wide – entities subject to the Privacy Act	Government to complete review in 2021
Introduction of a statutory tort for serious invasions of privacy (Rec 19)	Economy-wide	Government to review as part of broader review of Privacy Act by 2021

MEDIA

Recommendation	Industries affected	Status & Timing
Work closely with ACMA, affected stakeholders to address priority reform areas: (Rec 6 Stage 1); consider extent of Australian content obligations on free-to-air TV broadcasters, and consider policy for other aspects of Australian film and TV content	Film, media	Work to be conducted over 2020
Review of advertising rules & restrictions across delivery platforms; consideration of monitoring and enforcement mechanisms of regulatory framework; other measures to improve legal framework for consumers (Rec 6 stage 2)	Digital platforms, media	Work to be conducted over 2020

RECOMMENDATIONS UNSUPPORTED BY THE GOVERNMENT

MEDIA

Recommendation	Industries affected	Status & Timing
Government does not support the implementation of a take-down code to assist copyright enforcement on digital platforms (Rec 8); more data would be needed to determine the appropriate response given the 2018 copyright enforcement reforms	Digital platforms	
Government does not support an amendment to tax settings to encourage philanthropic support for journalism (Rec 11); 2017 reforms to the administration of Deductible Gift Recipients are Government's current focus	Media	

FOR FURTHER INFORMATION, PLEASE CONTACT



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