

**COMMUNICATIONS
ALLIANCE LTD**



Communications Alliance Submission

to the Senate Economics References Committee
in response to the

Inquiry into the influence of international digital platforms

3 March 2023

Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

Submission

Communications Alliance welcomes the opportunity to provide a submission to the Senate Economic References Committee's inquiry into the influence of international digital platforms operated by Big Tech companies.

Members may also make individual submissions in response to the Committee's inquiry.

We have read the terms of reference for the inquiry and the Issues Paper published by the Committee with interest, as it raises a variety of important issues as they pertain to the digital economy and the internet more generally, but also to some of our members in particular.

Communications Alliance and our members, which include a number of the organisations listed in the Committee's Issues Paper, are actively engaging with ongoing policy processes and reviews that already deal with the concerns raised by the Committee. We – and our members – also liaise frequently in formal and informal processes with all regulators and departments in the relevant areas to ensure we constructively and proactively contribute to policy debate and address any concerns around regulatory or legal compliance as soon as they arise (or ideally prior to those arising).

The inquiry singles out 'Big Tech' and/or international digital platforms as the target of potentially required action in various areas of concern. However, many of the issues raised for consideration, such as data practices, vertical integration, a user's ability to exercise choice, etc. are not 'Big Tech'/digital platform-specific matters, but rather apply economy-wide, or at least in a much broader context. Poorly designed regulation can also have unintended consequences for Australian consumers and small businesses, given the importance of multinational digital platforms in enabling economic growth. Increasing the cost of doing business in Australia can inhibit the ability of digital platforms to deliver efficient services, launch innovative new products, and enable small businesses to reach international markets and thrive.

In our view, it would be better practice to focus on specific competition and market concentration issues from an economy-wide or industry-specific perspective, that are objectively and demonstrably detrimental to consumer welfare, and where specific actual harms have been identified. This is irrespective of whether that activity or behaviour has occurred online, offline or through some hybrid approach.

Importantly, most, if not all, of the topics envisaged for inquiry by the Committee are already subject to ongoing inquiries, consultation or review through dedicated processes and/or fall within the remit of specialised regulators and agencies. Below is a non-exhaustive list of relevant processes that are currently on foot.

1. The **Digital Platform Services Inquiry (DPSI)** by the Australian Competition & Consumer Commission (ACCC) with a focus on:
 - “an in-depth focus on online private messaging services in Australia. It also updates the ACCC's previous analysis in relation to search and social media platforms and identifies competition and consumer issues common across these platforms”¹ (first interim report);
 - “in-depth consideration of competition and consumer issues associated with the distribution of mobile apps to users of smartphones and other mobile devices. It specifically focuses on the two key app marketplaces used in Australia, the Apple App Store and the Google Play Store”² (second interim report);

¹ as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/september-2020-interim-report> on 20 Feb 2023

² as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/march-2021-interim-report> on 20 Feb 2023

- “the provision of web browsers and general search services to Australian consumers and the effectiveness of choice screens in facilitating competition and improving consumer choice. The report also provides the ACCC's advice to the Australian Government on Google's rollout of search engine choice options on new Android devices in Europe”³ (third interim report);
- “potential competition and consumer issues in the provision of general online retail marketplaces to consumers in Australia. This includes:
 - intensity of competition in the relevant markets
 - trends in online shopping and general online retail marketplaces
 - the conduct of marketplaces in their roles as platforms to facilitate interaction between third party sellers and consumers; including, where marketplaces also supply their own products on their platform, the impact that these sales and associated practices may have on competition with third-party sellers
 - relationships between marketplaces and third-party sellers
 - relationships between marketplaces and consumers, as well as third party sellers and consumers”⁴ (fourth interim report);
- “competition and consumer issues identified in the course of the Digital Platform Services Inquiry, the ACCC's Digital Advertising Services Inquiry and the original Digital Platforms Inquiry.

The ACCC recommends a range of new measures to address harms from digital platforms to Australian consumers, small businesses and competition. In addition to consumer and competition specific recommendations for digital platforms, the report also reiterates the ACCC's support for economy-wide reforms to consumer law”⁵ (fifth interim report); and

- “potential competition and consumer issues in the provision of social media services to consumers and businesses in Australia by social media platforms. [...] Issues to be examined include:
 - The degree of competition between social media services
 - Trends in mergers and acquisitions by social media platforms and the effect of these activities on competition for social media services
 - The role of advertising services, including display advertising, sponsored posts and influencer advertising, offered by social media platforms on [sic] competition for social media services
 - The use and abuse of social media services for scams and misleading or deceptive content”⁶ (sixth interim report, yet to be delivered in March 2023).

A final report will conclude the DPSI in 2025.

Treasury is currently consulting on the recommendations put forward by the ACCC in its fifth interim report to ensure a broad range of stakeholder views are being considered in the formulation of a Government response to the ACCC's recommendations.

³ as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/september-2021-interim-report> on 20 Feb 2023

⁴ as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/march-2022-interim-report> on 20 Feb 2023

⁵ as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/september-2022-interim-report> on 20 Feb 2023

⁶ as accessed at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/march-2023-interim-report> on 20 Feb 2023

2. The **Review of the Privacy Act 1988** and the Attorney-General's Department's (AGD) recently released 'Privacy Act Review Report' (Report), which includes 116 recommendations to reform Australia's privacy law. AGD has "considered whether the Act and its enforcement mechanisms are fit for purpose in an environment where Australians now live much of their lives online⁷ and their information is collected and used for a myriad of purposes in the digital economy."⁸

The Report contains far-reaching recommendations, including in the areas of:

- protection of children and vulnerable persons (e.g., mandatory Children's Online Privacy Code for services that are likely to be accessed by children);
 - direct marketing, targeting and trading, with proposals to provide for an unqualified right to opt-out of personal information being used or disclosed for direct marketing purposes or receiving targeted advertising, with a prohibition to use personal information to direct market or target children unless this is in their best interests;
 - enforcement, including the proposed introduction of a direct right of action and statutory tort for serious invasions of privacy;
 - collection of personal information (with a proposal to cover information obtained from any source and any means including inferred or generated information);
 - consent and privacy default settings;
 - fair and reasonable handling of personal information;
 - security, retention, destruction of data; and
 - automated decision making.
3. (Part A) of the **reform of the Model Defamation Provisions (MDPs)**, which have been approved in principle (for commencement from January 2024) and are subject to agreement in the first half of this year. The reform is described as a "pragmatic approach that is intended to strike a better balance between protecting reputations and not unreasonably limiting freedom of expression in the various circumstances where third parties publish defamatory matter via internet intermediaries."⁹

We note that the then Morrison Government sought to introduce the *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021* into Parliament and indeed did introduce the *Social Media (Anti-Trolling) Bill 2022*. Both bills sought to implement sector-specific legislation with a focus on digital platforms. As highlighted above, in our view, this approach is misguided, and the respective reforms of the *Privacy Act 1988* and the MDPs provide the appropriate avenues for economy-wide reform, where such may be required.

4. The development of the **Online Safety Codes (or Standards) for class 1 and class 2 material**.

Industry associations have developed eight industry codes for class 1 material. The codes will create industry-wide protections for Australians in relation to materials such as child sexual exploitation material, pro-terror content, and extreme crime and violence. The

⁷ Consumer Policy Research Centre, [Data and Technology Consumer Survey](#) (Report, December 2020); ABS, [Household Use of Information Technology Survey](#) (Report, March 2018); ACMA, [Communications Report 2018-19](#) (Report, February 2020) 23; ACCC, [DPI Report 379](#); OECD, [Data-Driven Innovation Big Data for Growth and Well-Being](#) (Report, October 2015) 20; IDC, [The Digitization of the World From Edge to Core](#) (Report, November 2018); ACCC, [Internet Activity Report](#) (Report, June 2021) 1.

⁸ p. 1, Attorney-General's Department, Privacy Act Review, Report 2022 (Feb 2023)

⁹ as accessed at: https://www.justice.nsw.gov.au/justicepolicy/Pages/lpclr/lpclr_consultation/review-model-defamation-provisions.aspx on 21 Feb 2023

codes also contain additional safeguards in relation to children's safety on digital platforms and when using interactive devices.

The codes, if registered by the eSafety Commissioner, will be enforceable by the Office of the eSafety Commissioner for eight sections of the online industry, including social media services, providers of relevant electronic services (includes any services with messaging, and gaming), providers of designated internet services (includes all websites in Australia), providers of internet search engine services, providers of app distribution services, providers of hosting services, providers of internet carriage services, and persons who manufacture, supply, maintain or install certain equipment (includes retailers). If the Codes are not registered, the Commissioner can proceed to make Standards, most likely in the first half of this calendar year.

A second code(s) (or Standard(s)) for class 2 material, which is largely pornographic in nature, that deals with appropriate access regulations for such material, is likely to follow later in 2023. Such measures would further enhance the protections for children online.

5. the finalisation of the **Age Verification Roadmap**, designed to address the harms associated with children's access to pornography, by the eSafety Commissioner in March 2023 which, arguably, may also affect how Australia will tackle online age verification or age assurance in other areas where online content may not be appropriate for all audiences. An evidence-based age verification/assurance framework will assist industry in further refining existing safeguards that aim to protect children online and, where appropriate, work to introducing new measures, such as the codes on class 2 material.
6. the **Basic Online Safety Expectations (BOSE)** which, since January 2022, create a set of expectations, such as:
 - "taking reasonable steps to proactively minimise material or activity that is unlawful or harmful, and ensuring users can use a service in a safe manner
 - protecting children from content that is not age appropriate like pornography
 - taking reasonable steps to prevent harmful use of anonymous and encrypted services
 - putting in place user-reporting mechanisms, and clearly outlining their terms of service and enforcing penalties for people who breach these terms
 - cooperating with other service providers"¹⁰

The BOSE include a number of expectations specifically focussing on the safety of children, including as a default 'most restrictive privacy settings' and the prevention of access to class 2 material.

Importantly, the BOSE operate in conjunction with the *Online Safety Act 2021* to create mandatory reporting obligations against the expectations and create a transparency regime ('name and shame') for the Commissioner in relation to the information received. With a first round of such requests for information under the BOSE issued in late August 2022 (and subsequent reporting) and a second round of request to a different set of organisations only issued on 23 February 2023, more time and analysis would be required before the effectiveness (or otherwise) of the BOSE could be evaluated.

7. the **Australian Code of Practice on Disinformation and Misinformation** which has, so far, been adopted by Adobe, Apple, Facebook, Google, Microsoft, Redbubble, TikTok and Twitter. "Participating companies also commit to releasing an annual transparency report

¹⁰ as accessed at: <https://www.esafety.gov.au/industry/basic-online-safety-expectations> on 21 Feb 2023

about their efforts under the code, which will help improve understanding of online misinformation and disinformation in Australia over time. Transparency reports were published in May 2021 and May 2022."¹¹

In addition to the Code, the Minister for Communications, The Hon Michelle Rowland MP, recently announced that the Albanese Government will, later in 2023, "legislate to provide the Australian Communications and Media Authority (ACMA) with new powers to hold digital platforms to account and improve efforts to combat harmful misinformation and disinformation in Australia."¹² Such measures include new information-gathering and record-keeping powers to further enhance transparency efforts, if required, and the ability to register an enforceable industry code or to make an industry standard should industry efforts to develop a code prove insufficient.

With high rates of COVID vaccinations (as a potential indicator of relatively low rates of dis/misinformation in this field) and low rates of dis/misinformation during the 2022 federal election campaign, we are keen to understand further evidence of the problem that additional regulation or legislation would usefully address at this early stage of the DIGI industry Code and with the legislative changes already foreshadowed by Minister Rowland.

8. the **Senate Select Committee on Foreign Interference through Social Media**, tasked to "report on the risk posed to Australia's democracy by foreign interference through social media, with particular reference to:

- the use of social media for purposes that undermine Australia's democracy and values, including the spread of misinformation and disinformation;
- responses to mitigate the risk posed to Australia's democracy and values, including by the Australian Government and social media platforms;
- international policy responses to cyber-enabled foreign interference and misinformation;
- the extent of compliance with existing Australian laws and regulations; and
- any other related matters."¹³

Consequently, this Committee will, so we understand, consider dis/misinformation from another angle and, where required, make appropriate recommendations, thereby adding to the safeguards of the existing DIGI code.

9. the consultation¹⁴ on the **2023-2030 Australian Cyber Security Strategy (ACSS)**, which focuses Government policy and initiatives in the following key areas:

- "A secure economy and thriving cyber ecosystem
- A secure and resilient critical infrastructure and government sector
- A sovereign and assured capability to counter cyber threats

¹¹ as accessed at: <https://digi.org.au/disinformation-code/> on 21 Feb 2023

¹² as accessed at: <https://minister.infrastructure.gov.au/rowland/media-release/new-acma-powers-combat-harmful-online-misinformation-and-disinformation> on 21 Feb 2023

¹³ as accessed at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Interference_Social_Media/ForeignInterference47/Terms_of_Reference on 23 Feb 2023

¹⁴ submissions in response to the 2023-2030 Australian Cyber Security Strategy Discussion Paper are due by 15 April 2023.

- Australia as a trusted and influential global cyber leader, working in partnership with our neighbours to lift cyber security and build a cyber resilient region"¹⁵.

Therefore, in addition to already existing processes such as the reform of the *Security of Critical Infrastructure Act 2018* and associated sector-specific legislation/regulation, the ACSS will further contribute to lifting data security practices for all Australians across a range of critical sectors, with beneficial flow-on effects economy-wide.

10. the **Digital Identity Legislation**, which saw three rounds of consultation including the *Trusted Digital Identity Bill 2021* exposure draft.

It appears clear that Australia will move forward with a Digital Identity framework in the near future. Such initiatives, in conjunction with, for example, the Age Verification Roadmap and the ACSS, if well-designed and bolstered by robust security and privacy frameworks, can further assist with strengthening Australia's overall data security posture.

11. the Department of Industry, Science and Resource **consultation into Positioning Australia as a leader in digital economy regulation (automated decision making and AI regulation)** (May 2022)

As indicated above, in addition to the above processes, Communications Alliance and its members regularly engage with various stakeholders, including

- all relevant State and Federal Departments;
- the Australian Communications and Media Authority (ACMA);
- the ACCC;
- the Office of the eSafety Commissioner;
- the Office of the Australian Information Commissioner; and
- the Australian Human Rights Commission.

Communications Alliance appreciates the opportunity to engage with all processes designed to foster a competitive, secure and safe digital ecosystem in Australia. Given the existing processes listed above and established expert functions within relevant regulators (e.g., ACCC, eSafety Commission and ACMA among others) and agencies, the Committee's inquiry risks duplicating these processes and responsibilities. We recommend allowing these processes to conclude, new regulatory instruments to 'settle down', and the relevant expert agencies to exercise their functions as appropriate. Should any issues remain following a reasonable amount of time to observe the implementation of changes resulting from these ongoing reform processes/instruments, it would then be appropriate to consider how any outstanding issues could be resolved.

However, there are important opportunities for the Committee to complement the processes listed above through this inquiry. First, as the number and complexity of the reforms illustrate in themselves, there is a need to ensure effective coordination within and between the different parts of Government charged with the review, consultation and reform processes that we have identified. More importantly, ongoing policy development, implementation and enforcement on issues such as privacy, data security and digital identity will require a level of coordination to provide clarity for industry and Government alike, and avoid

¹⁵ as accessed at: <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/2023-2030-australian-cyber-security-strategy-discussion-paper> on 27 Feb 2023

unintended consequences through inconsistencies. Australian digital policy would be improved by increased attention to controlling the regulatory thicket.

The second area that would benefit from further consideration are self-regulatory approaches to the issues being examined. Communications Alliance and many of our members have experience with self- and co-regulation, particularly in relation to the telecommunications sector. Industry codes and consultation process have provided practical and flexible frameworks for addressing issues that often appear intractable. By providing a channel for industry knowledge and commitment, solutions can be developed that promote compliance without restricting growth or innovation in very dynamic environments. This is particularly important to ensure digital innovation and investment, employment and skills development continue to benefit the Australian economy.

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