

ONLINE HARMS AND ONLINE SAFETY: IS GREATER HARMONISATION ON THE HORIZON FOR AUSTRALIA?

20 December 2019 | Australia

Legal Briefings - By **Anna Jaffe, Tony Cooke and Marine Giral**

On 11 December 2019, the Government released a discussion paper on a proposed [Online Safety Act](#) (the **Proposal**) for consultation.

The Proposal comes only months after the adoption of the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* (Cth) (better known as the social media laws) in April 2019. It is intended to consolidate and harmonise the current legislative framework applying to online safety to ensure consistency in processes and penalties across a range of offences relating to cyberbullying, cyber abuse, image-based abuse and seriously harmful content.

This reinforcement of Australia's legal framework for online safety and online harmful content is in line with the broader global trend towards increased regulation of online content. Regulators around the world are either adopting or considering laws that require stricter content moderation by technology providers (see our briefing [Online harmful content: the race to regulate](#)), particularly following the role that the internet played in the proliferation and distribution of footage of the Christchurch terrorist attacks.

We have set out an ‘at a glance’ overview of the current Australian online harm and online safety legal framework and the proposed new Online Safety Act, as outlined in the Proposal.

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THE MARCH TOWARDS HARMONISATION

As illustrated in our overview, the proposed new Online Safety Act is intended to consolidate the various components of the existing online safety regulatory framework in a single place, and update them in light of the changes in the digital landscape.

The effect of the proposed changes are likely to be far reaching. The Proposal states that, ‘as far as possible’, the revised schemes would apply ‘consistently to the different types of online service providers, and not just large social media companies and ISPs’.

By removing certain distinctions under existing online safety schemes, and their resulting separate compliance pathways, the Proposal would streamline coverage and ensure that the same type of content disseminated on various services is treated consistently and is not subject to multiple layers of obligations. However, particularly given the early stages of the Proposal, it is clear that the new Act will not fully resolve the complex and intersecting issues that arise out of attempts to regulate online harmful content globally (and indeed, the Proposal itself may give rise to further such issues). For example:

- notwithstanding the drive towards harmonisation, there will always be circumstances where a ‘one size fits all’ approach will not be appropriate, and different standards will be required for different types of providers (whether due to size, location, the nature of services provided, or other factors);
- although the Proposal evidences an intention to drive global standardisation in the area of online harmful content, this will not be practical (and accordingly, the reach of the Act is likely to be limited) without more coordinated global action;
- the Proposal often refers to objective tests for what may be considered ‘harmful’, but both the intent and nature of online material, as well as community expectations, are both context-dependent and will evolve over time, making attempts to derive global standards difficult — and, if these standards align only to what is agreeable to the majority, risking the marginalisation of those with alternative views and reducing the capacity of the internet to act as an instrument for change; and

- it is not clear whether the imposition of stronger, more generally applicable standards (particularly with respect to content take down notices) could lead to unintended consequences, for example, that technology providers will take an overcautious approach to the removal of potentially lawful content.

Further, the Government has separately indicated in its response to the final report of the ACCC's Digital Platforms Inquiry that it intends to further consider media regulation across all platforms later in 2020, as part of its process for platform-neutral reforms of Australia's media regulatory framework more broadly. It is not clear whether and how these reforms will interact with the Proposal.

NEXT STEPS

The Proposal is open for public consultation until 19 February 2020 (see [here](#)). Given the ongoing challenges and issues in the regulation of online harmful content both locally and globally, including as set out above, it will be critical for stakeholders to remain engaged and involved in the process as it moves towards implementation.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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