

1 March 2019

Digital Platforms Inquiry  
Australian Competition and Consumer Commission  
Level 24  
400 George Street  
Brisbane Qld 4000

Our ref: KS:CCL

By email: [platforminquiry@accg.gov.au](mailto:platforminquiry@accg.gov.au)

Dear Madam/Sir

### **Digital platforms inquiry – response to preliminary report**

Thank you for the opportunity to provide comments on the ACCC's 'Digital platforms: preliminary report' (**the preliminary report**).

The Queensland Law Society (**QLS**) appreciates the opportunity to comment on some of the matters raised by this inquiry. This response has been compiled with the assistance of the Competition and Consumer Law Committee who have substantial expertise in this area.

The Queensland Law Society is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

### **Background**

By way of background, we understand that the focus of this inquiry is 'the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.'<sup>1</sup> We note that the 'digital platforms' which form the subject of this inquiry include 'search engines, social media platforms and digital content aggregation platforms'<sup>2</sup> and in particular, Google and Facebook.

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<sup>1</sup> ACCC, Digital platforms inquiry, Project overview, online

<sup>2</sup> Preliminary report, 10 December 2018, p 21.

## Digital platforms inquiry – response to preliminary report

From a consumer perspective, a central concern for the QLS in this space and indeed with respect to matters raised by this inquiry and recommendations of the preliminary report, is the need to ensure that consumers have greater clarity surrounding:

- (a) the terms and conditions consumers ‘sign up to’ when utilising platform providers; and
- (b) the nature and extent of any subsequent use of personal data which has been collected.

In this regard, we note that the preliminary report highlights ‘the impact of digital platforms on consumers in terms of digital platforms’ acquisition and treatment of consumers’ information’.<sup>3</sup>

### **Preliminary Recommendation 8—use and collection of personal information**

The QLS agrees with the preliminary report’s finding that ‘that consumers are unable to make informed choices over the amount of data collected by the digital platforms, and how this data is used’.<sup>4</sup>

#### *Notification requirements*

With respect to ‘Strengthening notification requirements’ (preliminary recommendation 8 (a)), we note the preliminary report’s observation that the ‘Privacy Act does not expressly prescribe any notification requirements for organisations collecting the personal information of Australian consumers’.<sup>5</sup> We agree that there needs to be more transparency for consumers and that this may be facilitated by a framework regarding notification requirements.

In this regard, the QLS is supportive of the need for a clear, plain language summary and notification requirement which clearly and succinctly explains to consumers both the collection of their data and any proposed or anticipated use by a third-party. By way of example, we make reference to the ‘Key Facts Sheet’ which are to be provided in ‘prescribed contracts’ under the *Insurance Contracts Act 1984* (Cth).

An obligation to provide consumers with such notices may better facilitate consumer understanding and choices surrounding digital platform use and sharing of information. We would appreciate ongoing consultation on implementation of the proposed notification requirement to ensure both certainty for businesses and adequate content is provided to consumers.

#### *Exemptions to notification requirements*

We do raise some concerns about the proposal to implement exemptions to the notification requirements ‘where personal information is collected for non-commercial purposes and in the public interest’. While information may be initially collected for ‘non-commercial purposes’, consumers should still be notified of any proposed or intended disclosure to third parties and the purposes of any such disclosure.

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<sup>3</sup> Preliminary report, 10 December 2018, p 2.

<sup>4</sup> Preliminary report, 10 December 2018, p 13.

<sup>5</sup> Preliminary report, 10 December 2018, p 226.

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The QLS has not had the opportunity to properly consider the preliminary recommendations with respect to the proposals for ‘stronger, mandated controls over the collection, use, disclosure and erasure’ of consumer’s personal information.<sup>6</sup> However we submit that the use of any data should be limited to the disclosed purpose and further, that where an interest in data is assigned, the collector should not be excused from its obligations with respect to data which has been collected for a particular purpose. That is, an assignee or other user of the data is limited in its use of the data for the purpose for which it was initially disclosed.

Lastly, we note the preliminary report makes some preliminary recommendations with respect to legislative amendment to the *Privacy Act*. The QLS respectfully requests the opportunity to engage further with any of these proposed changes early on in the consultation process.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kerryn Sampson by phone on [REDACTED].

Yours faithfully



Bill Potts  
**President**

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<sup>6</sup> Preliminary report, 10 December 2018, p 225.