



Mr. David Pearl, Assistant Secretary, Competition and Consumer Branch
The Treasury
By email: digitalcompetition@treasury.gov.au

Wednesday, February 15, 2023

Dear Mr. Pearl,

The Digital Industry Group Inc. (DIGI) thanks you for the opportunity to provide our views on the ACCC's *Digital platform services inquiry Interim report No. 5 – Regulatory reform, September 2022* (Interim Report), in response to The Treasury's *Digital Platforms: Government consultation on ACCC's regulatory reform recommendations Consultation paper December 2022* (Treasury Consultation Paper).

DIGI is a non-profit industry association that advocates for the interests of the digital industry in Australia. DIGI's founding members are Apple, eBay, Google, Linktree, Meta, TikTok, Twitter, Snap and Yahoo. DIGI's vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected.

DIGI shares the Government's strong commitment to consumer protection, and we are pleased to have the opportunity to contribute to this inquiry. We are a key Government partner in this area, through our code development, partnerships, and our ongoing engagement with proposed regulation where we advocate for approaches that are effective in their goals and can practically be implemented by industry. DIGI and its members believe that the digital industry has an important responsibility to address consumer detriment, and that the Australian Government has a role to play in examining evidence of consumer harm, evaluating existing rules and providing proportionate and targeted interventions to protect consumers.

DIGI's members include companies of varying sizes and market status; as such, our submission focuses on the Interim Report's consumer recommendations, not its competition recommendations. Our analysis of these consumer recommendations is structured around the Treasury Consultation Paper's consultation questions. At the outset, we wish to highlight the overarching themes which underpin our comments:

- I. The Interim Report argues that Australia's competition and consumer laws are not well-suited to addressing the range and scale of harms in digital platform markets. DIGI is concerned that the ACCC's argument is premised upon:
 - A. A combined view of *consumer harms* and *competition issues*;
 - B. A conceptualisation of *consumer harms* that appears to include both what are traditionally considered to be *consumer protection issues* (e.g. scams) with a broad range of other *issues arising on digital platform services* (e.g. privacy).
- II. We understand that certain competition concerns can lead to specific consumer issues, and we appreciate that the ACCC deals with both competition and consumer issues under different parts of a single legislative regime under the Competition and Consumer Act 2010 (CCA). However, we would ask the Government to consider:
 - A. Ensuring the clear delineation of the *competition regime* from the *consumer protection regime* on digital platform services in a manner consistent with emerging approaches in

the UK and EU. This approach would provide greater clarity for market participants and mitigate potential unintended impacts.

- B. How the broad conceptualisation of some of the *consumer harms* advanced in the Interim report is being dealt with through existing regimes that are better suited to address many of these issues, such as a reformed Privacy Act and the Stage 2 Review of the Model Defamation Provisions (MDPs), and the Basic Online Safety Expectations under the Online Safety Act.

→ *For example:* DIGI is concerned that many of the harms identified as *consumer harms* in the Interim Report are actually *privacy harms* – such as ‘dark patterns’, ‘clickwrap consents’ and ‘harmful tracking’. Therefore it would be duplicative for these to be addressed as potential ‘unfair trading practices’ under the CCA, when they are expected to be addressed in the reform of the Privacy Act.

- III. DIGI welcomes an economy-wide approach to addressing consumer protection, but notes that any such approach must be properly designed, scoped, and implemented. We are concerned that an over-reliance on digital platform specific approaches will not be comprehensive enough to address Australians’ consumer protection concerns, because of the tendency for many of these issues to flow from digital services to other mediums, such as banking services or telephone.

→ *For example:* DIGI supports the establishment of a well-designed complaint handling scheme, such as an ombudsman, for consumers and small businesses to raise and resolve certain types of complaints *wherever* they arise, in a technology neutral approach.

- IV. As the Treasury Consultation Paper notes, in the global context, Australia is a smaller market than many of the jurisdictions at the forefront of digital platform regulation. This is an important consideration, because:

- A. There is an opportunity for Australia to wait and see the impact of major international regulatory regimes before determining its approach.
- B. Australia features towards the bottom of OECD rankings in relation to the size of our technology sector, and the technology sector has a major economic contribution economy-wide in Australia¹.

A focus on mitigating and addressing consumer harms in an economy-wide fashion will advance Government ambition to grow the technology sector. An economy-wide approach also recognises the challenges of ring fencing digital products and services in an increasingly digitising economy, where arguably almost every company is ‘digital’.

We also wish to highlight that DIGI has significant code development experience, having developed *The Australian Code of Practice on Disinformation and Misinformation* (ACPD) and co-led the development of proposed codes under the Online Safety Act. Should a further discussion about these experiences assist the Digital Competition Unit in its exploration of various regulatory tools, we would value the opportunity to meet with you to discuss this, as well as the contents of our submission. We thank you for your

¹ See AlphaBeta (now Accenture), (2019), *Australia’s Digital Opportunity*, accessed at: <https://digi.org.au/wp-content/uploads/2019/09/Australias-Digital-Opportunity.pdf>. This report, commissioned by DIGI, showed that Australia ranks second last in the OECD for the relative size of its technology sector. It also quantified the contribution of Australia’s technology sector to the national economy. It found that, at that point in time, the technology sector contributed \$122 billion each year to the national economy, or 6.6% of GDP. A subsequent estimate by Accenture in 2021 found that the tech sector contributes \$167bn, or 8.5%, of GDP. See Accenture (2021), *The economic contribution of Australia’s tech sector*, accessed at <https://techcouncil.com.au/wp-content/uploads/2021/08/TCA-Tech-sectors-economic-contribution-full-res.pdf>. The 2019 report found that if Australia caught up with the growth rate of tech-leading countries in the OECD, the economy-wide economic contribution of the technology sector in Australia could double by 2030.

consideration of the matters raised in this submission and please do not hesitate to contact me to discuss it further.

Best regards,

A handwritten signature in black ink, appearing to read 'Sunita Bose'.

Sunita Bose
Managing Director, DIGI
sunita@diggi.org.au

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The case for a new regime and its objectives

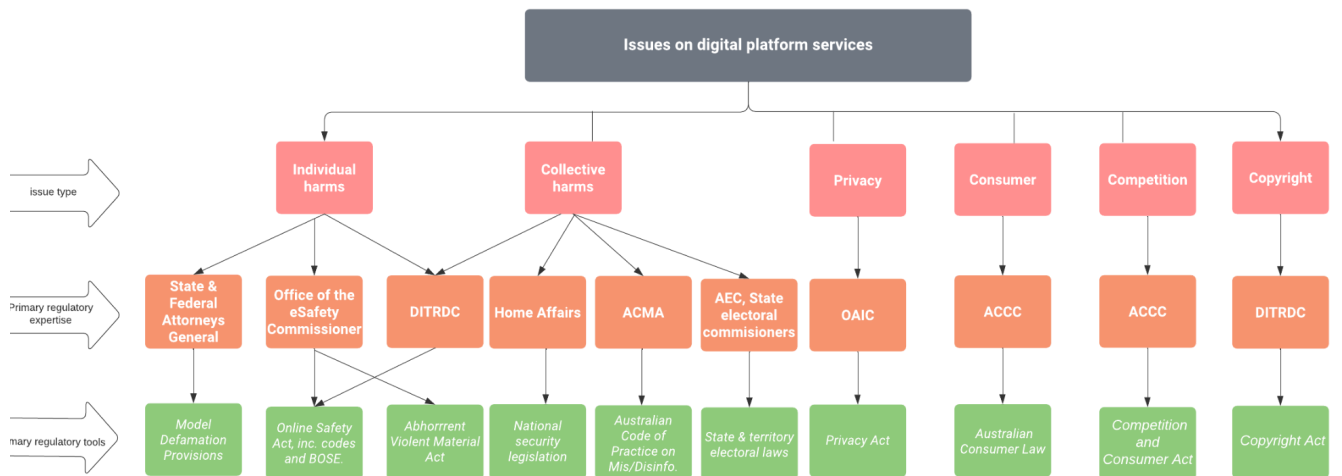
Treasury Consultation Paper Discussion Questions 1-3

1. Existing regulatory frameworks

- 1.1. As noted, DIGI questions the ACCC's conclusion that relying on existing regulatory frameworks would lead to adverse outcomes for Australian consumers and businesses; however, we do believe there are areas for improvement in both the regulatory frameworks and non-regulatory options that would serve to improve consumer protection.
- 1.2. It is possible that the vantage point from which the ACCC makes this argument is through a focus on the Competition and Consumer Act 2010 (CCA). As noted, DIGI is of the view that the CCA is not intended to cover the broad conceptualisation of consumer harms advanced in the Interim report. There are a range of other relevant laws better suited to address many of the issues identified, such as a reformed Privacy Act and the Stage 2 Review of the Model Defamation Provisions (MDPs), and the Basic Online Safety Expectations under the Online Safety Act.
- 1.3. The ACCC's analysis therefore does not present a comprehensive picture of the existing regulatory frameworks that are used to address issues arising on digital platform services. DIGI has developed Figure 1 (on p. 5) that maps issues arising on digital service providers, identifies the arms of Government with primary regulatory expertise in those areas, and the primary regulatory tools at their disposal (noting that these are not exhaustive).
- 1.4. Supplementing this existing regulatory environment with a new framework could be counterproductive, as it would add further complexity to what has already been described as an overlapping regime for digital service providers. Such a framework would likely lack the depth, breadth and clarity to be suitably comprehensive in addressing consumer privacy, safety, cyber security and fair trading issues on digital platform services. Furthermore, each of the regulators and Departments identified in Figure 1 has developed extensive expertise in their issue area in their offline manifestation, as well as their online manifestation. DIGI is concerned that this expertise may not be fully leveraged with rationalisation under a potentially single framework.
- 1.5. However, DIGI is supportive of reform processes that modernise each of these regulatory tools for a digital era, address gaps, and efforts to ensure that relevant regulators are well resourced. Resourcing should encompass upskilling and training to ensure continued regulator expertise in their portfolio issues as they relate to digital platform services. For example, DIGI supports the recent announcement by the Government that the ACMA will be empowered with a formal, long-term role in relation to misinformation and disinformation on digital platform services².

²Minister for Communications, the Hon Michelle Rowland MP, 20/01/2023, *New ACMA powers to combat harmful online misinformation and disinformation* [Media Release], accessed at

Figure 1: Issues on digital platform services and corresponding regulatory tools and expertise



2. Non-regulatory options

- 2.1. In addition to ensuring regulator capacity and the modernisation of regulation to address digital challenges, we recommend that the Treasury also examine non-regulatory options that will improve consumer protection.

Industry & consumer facing communication

- 2.2. Currently, there are no comprehensive portals whereby new industry entrants to the Australian market or companies seeking to understand their compliance obligations can receive information about the various regulatory tools that may apply.
- 2.3. Furthermore, there is no comprehensive portal of information for consumers about the tools and avenues they may explore for recourse in relation to particular issues.
- 2.4. Treasury should consider advancing recommendations that increase the clarity of rights and responsibilities for consumers and industry respectively through a consolidated website that provides links and information about their obligations and rights under the various regulatory frameworks aimed at addressing issues on digital platform services.

<https://minister.infrastructure.gov.au/rowland/media-release/new-acma-powers-combat-harmful-online-misinformation-and-disinformation>

Comprehensive Government cooperation mechanisms

- 2.5. DIGI believes that strong cooperation mechanisms between Australian regulators and Departments that have a role in relation to digital platform services are critical to advancing efforts to address consumer harms.
- 2.6. DIGI welcomed the formation of Digital Platform Regulators Forum (DP-REG) last year³, which formalises cooperation between the ACCC, ACMA, OAIC and eSafety. DIGI agrees that such a forum is needed in order to ensure effective coordination on the regulation of digital platforms in a multilateral fashion. We welcome the focus on streamlining overlapping regulation, reducing duplication and creating proportionate, cohesive, well-designed and efficiently implemented digital platform regulation outlined in the DP-REG's Terms of Reference⁴. DIGI strives for similar goals in its extensive engagement with Australian digital policy.
- 2.7. Digital platform reform proposals and strategies advanced by many other agencies and Departments across the Australian Government, particularly the Department of Infrastructure, Transport, Regional Development and Communications, the Department of Home Affairs, the Attorney General's Department and the Department of Prime Minister & Cabinet. We encourage the DP-REG to consider how it might regularly engage with other arms of Government that are advancing digital platform policy, and how that work programme can improve outcomes in key areas such as consumer protection.

Summary of recommendations in this section

- A. Different regulators and Government departments should be resourced and skilled to continue to specialise in their respective areas of expertise as they relate to digital platform services.
- B. There should be strong cooperation mechanisms with other regulators and Departments, and transparency and consultation with the digital industry.
- C. Consumers and industry should both have clear, comprehensive targeted and public communications about their rights and responsibilities respectively on digital platform services.

³ ACMA, (11/03/22), *DP-REG joint public statement* [Media Release], accessed at <https://www.acma.gov.au/dp-reg-joint-public-statement>

⁴ DP-REG (2022), *Digital Platform Regulators Forum Terms of Reference*, accessed at <https://www.acma.gov.au/sites/default/files/2022-03/DP-REG%20Terms%20of%20Reference%20.pdf>

Coordination with other Government policies and processes

Treasury Consultation Paper Discussion Questions 4-6

3. Separate consideration of consumer and competition recommendations

- 3.1. As noted, DIGI understands that certain competition concerns can lead to specific consumer issues, and we appreciate that the ACCC deals with both competition and consumer issues under different parts of a single legislative regime. However, DIGI is concerned that there is an overly combined analysis of consumer harms and competition issues in the Interim Report. We encourage the Government to more clearly separate consideration of amendments to the economy wide consumer protection regime from proposals for competition reform.
- 3.2. Separate consideration of the reform proposals would be consistent with emerging approaches in the UK and the EU. The EU's Digital Services Act sets out basic rules for intermediaries, and additional regulation for certain services defined as 'platforms', in order to address specific consumer harms. The EU's Digital Markets Act is a targeted ex-ante regime to address competition issues for providers designated as 'gatekeepers'. The UK's forthcoming Competition and Digital Markets Bill will have two distinct sections: a targeted pro-competition regime to address entrenched market power, and targeted amendments to the existing economy-wide consumer protection framework. Australia should similarly aim to better delineate the competition regime from the consumer protection regime on digital platform services.
- 3.3. It is also important to note that the term 'platforms' is typically narrower in other jurisdictions than the ACCC has defined it. For example, we understand that some of the UK and EU laws specifically exclude ad intermediation, curated content and webmail services. We encourage the Government to ensure that proposals for legislative reform are appropriately scoped and not overly broad.

4. Privacy Act Reform

- 4.1. In response to the consultation question on whether there are conflicts between the ACCC's recommendations and existing Government policy, DIGI wishes to highlight key areas of overlap with the proposed reform to the Privacy Act.
- 4.2. As noted, DIGI is concerned that many of the harms identified as *consumer harms* in the Interim Report are actually *privacy harms* – such as 'dark patterns', 'clickwrap consents' and 'harmful tracking'. Therefore it would be duplicative for these to be addressed as potential 'unfair trading practices' under the CCA, when they are expected to be addressed in the reform of the Privacy Act.
- 4.3. At time of writing, DIGI understands that the Attorney General has received the review

undertaken by the Attorney General's Department⁵. Through our engagement in the most recent consultation in that review, as articulated in the Privacy Act Review Discussion Paper, we note that several relevant proposals were advanced:

- 4.3.1. The ACCC expresses concern about 'clickwrap consents' that are "Inducing consent or agreement by very long contracts, providing insufficient time to consider contracts or all-or-nothing". The Privacy Act Review Discussion Paper recommends changes that there be "express requirement in APP5 that notices must be clear, current and understandable."⁶ DIGI broadly supports this proposal.
- 4.3.2. The Privacy Act Review Discussion Paper also advances relevant changes to the consent APP entities must obtain in order to collect, use and disclose personal information, with proposals to expand the definition of consent to include "voluntary, informed, current, specific and unambiguous through clear action"⁷. DIGI supports many elements of this expansion, and considers that the definition of consent should be expanded consistent with the approach taken in the European Union's General Data Protection Regulation (GDPR).
- 4.3.3. The ACCC expresses concern about what it considers "harmful and excessive tracking, collection and use of data". DIGI believes that this is addressed through the Privacy Act Review's following two recommendations, both of which DIGI supports:

Collection, use or disclosure under APP3 or APP6 must be fair and reasonable and legislated factors to consider could include;

- *whether an individual would reasonably expect their information to be collected, used or disclosed under the circumstances*
- *the sensitivity and volume of information being collected, used or disclosed*
- *whether there is a foreseeable risk of unjustified adverse impacts or harm as a result of the collection, use or disclosure*
- *whether the collection, use or disclosure is reasonably necessary to achieve the functions and activity of the entity*
- *whether loss of privacy is proportionate to the benefits received*
- *transparency of the collection, use or disclosure*
- *if information relates to a child, whether the collection, use or disclosure is in the best interests of the child*⁸.

...

entities that engage in the following restricted practices must take reasonable steps to identify privacy risks and implement measures to mitigate the risks;

⁵ Karp, P. (19/01/2023), *Australia to consider European-style right to be forgotten privacy laws*, in The Guardian, accessed at <https://www.theguardian.com/australia-news/2023/jan/19/right-to-be-forgotten-australia-europe-gdpr-privacy-laws>

⁶ Attorney General's Department, October 2021, *Privacy Act Review Discussion Paper*, accessed at https://consultations.ag.gov.au/rights-and-protections/privacy-act-review-discussion-paper/user_uploads/privacy-act-review-discussion-paper.pdf, p.10

⁷ *Privacy Act Review Discussion Paper*, p. 11.

⁸ *Privacy Act Review Discussion Paper*, p. 11.

- direct marketing (including online targeted advertising on a large scale)
- collection, use or disclosure of sensitive information on a large scale
- collection, use or disclosure of children's personal information on a large scale
- collection, use or disclosure of location data on a large scale
- collection, use or disclosure of biometric or genetic data, including the use of facial recognition software
- sale of personal information on a large scale
- collection, use or disclosure of personal information for the purposes of influencing individuals' behaviour or decisions on a large scale
- collection, use or disclosure of personal information for the purposes of automated decision making with legal or significant effects
- any collection, use or disclosure that is likely to result in high privacy risk or risk of harm to an individual⁹.

4.3.4. The ACCC has also advanced the concept of 'dark patterns online'. DIGI agrees that consumers should be able to make informed choices in their online interactions and be protected from exploitative or manipulative practices. While we again consider that Privacy Act Review proposals in relation to marketing are the most appropriate method with which to address such behaviour, DIGI is also of the view that further clarity is needed on what might constitute a 'dark pattern online' to differentiate this activity from marketing that occurs in an online and offline environment. Is a 'dark pattern online' analogous to a supermarket placing low-priced consumer items at the checkout counter to entice further purchases? Is it analogous to a clothing store offering a discount at the checkout counter if customers provide an email address to be added to their mailing list, without providing a printed privacy policy to the consumer? Such practices are common in a retail environment, and we believe that further analysis and differentiation of the 'dark patterns' concept needs to occur, with a focus on consumer harm.

Summary of recommendations in this section

- D. Consistent with emerging approaches in the UK and EU, Australia should aim to better delineate the competition regime from consumer protection regime on digital platform services.
- E. Many of the harms identified as consumer harms in the Interim Report are actually privacy harms – such as 'dark patterns', 'clickwrap consents' and 'harmful tracking'. Noting the need for further definitional clarity as to what constitutes 'dark patterns', these issues should be addressed in the reform of the Privacy Act.

⁹ Privacy Act Review Discussion Paper, p. 12.

Consumer Recommendations

Treasury Consultation Paper Discussion Questions 8-12

5. Protecting consumers from scams

Holistic solutions that encompass 'off platform' activity

- 5.1. DIGI's members invest heavily in protecting Australian consumers from scams. They enforce restrictions on scams, spam, fraud and other deceptive conduct – including phishing, impersonation and misrepresentation – on organic content as well as paid content and advertising. In line with local laws, their policies prohibit deceptive or harmful business propositions, with restrictions on misleading, false, or unsubstantiated claims during the promotion of a product or service. In addition to internal policies, many of them work closely with other companies and governments, including with the ACCC's Scamwatch program, to both identify and act on trends in scams and criminal behaviour.
- 5.2. Where company-level measures, such as those listed above, are not utilised or effective in addressing a particular scam, particularly when it continues 'off-platform' to another service, DIGI considers that regulators and law enforcement should provide consumers with a safety net through which to escalate and resolve their concerns.
- 5.3. As the Treasury Consultation Paper notes, a separate Government policy being advanced is the establishment of the National Anti-Scam Centre (NASC)¹⁰. DIGI strongly supports the establishment of the NASC, and we have provided views to the ACCC through a submission as to how we believe the centre can be set up to effectively improve consumer protection in relation to scams.
- 5.4. The NASC has been described publicly by the ACCC as being “designed to give consumers one contact point for advice on how to prevent scams and what to do when they have been hit¹¹”. DIGI agrees that this function of streamlining and improving consumer support for scams should be the primary goal of the NASC. We believe the NASC should expand coordination with other regulatory and law enforcement agencies, ensuring that victims of financial fraud are supported and are not given the 'runaround' to contact different agencies in order to resolve a single issue.
- 5.5. DIGI also considers that the NASC should have a research focus to better explore the life-cycle of scams and victim susceptibility, across different channels. Drawing on our members' experience, scams can have a complex life-cycle, moving across such as digital, online banking, email and telephone services.
- 5.6. There is also often an 'off platform' element to scams that can undermine the effectiveness of digital platform specific measures. For example, a user may discover a scam through a messaging or social media service and provide their phone number or banking details to the perpetrator; even if the content is removed by the digital service

¹⁰ ACCC (26/10/2022), Media release: [ACCC receives additional responsibilities in budget](#)

¹¹ ACCC (26/10/2022), Media release: [ACCC receives additional responsibilities in budget](#)

provider, the content removal will hinder the proliferation of the scam, but will not mitigate the potential financial impact on the user who has already connected with the perpetrator through a secondary medium.

- 5.7. While some digital platform services work to direct consumers away from this 'off-platform' activity – such as through restrictions to stop buyers and sellers attempting to complete or facilitate outside transactions or connections – the outright prevention of such activity may equally cause consumer complaints and competition concerns.
- 5.8. Scams are a complex financial crime and solutions must be *holistic* in involving relevant digital, telecommunications and financial service providers as well as regulators and law enforcement. DIGI believes that the NASC should deepen public-private and cross-sectoral relationships that aid in addressing, mitigating and increasing consumer education of scams. We are open to further discussion as to what a formalisation of that cooperation mechanism might entail.

Targeted solutions that address supply chain complexity

- 5.9. Solutions must also recognise the complexity of individual supply chains in relation to scams that present in paid advertising, and recognise the difference between closed and open ecosystems. In 'closed ecosystems', such as social media platforms or marketplaces, the provider can set the rules for entry to their ecosystem and take action independently of other actors e.g. action can be taken over the onboarding of onsite advertising and its presentation to users. Relevant DIGI members have broad-ranging advertising policies that prohibit or restrict a long list of illegal and potentially harmful goods and services. These policies are adapted to jurisdictions including Australian law and include topic areas such as misleading and deceptive conduct, harmful business propositions, online wagering, adult goods and services, alcohol and tobacco sales. Advertising on mainstream services requires pre-registration and ads are reviewed and non-compliant ads may be disapproved or removed, and repeat offender accounts may be suspended. These services provide user-facing reporting tools where content can be reported against these policies, and removed where necessary.
- 5.10. In 'open ecosystems', like programmatic advertising, collective action is needed by each entity in the supply chain, such as the advertiser, demand side platform, supply side platform and publisher. Industry codes play a crucial and necessary role, and the Government might further explore such codes and their relevance in Australia to deliver positive consumer outcomes, as they do in other complex markets like the construction industry or retailing. Adoption of established global standards and codes would be a more effective, scalable and affordable approach to statutory regulation, as intermediaries in the programmatic supply chain, unlike closed platforms, are limited in their capacity to singlehandedly address fraudulent advertising.

Notice & action mechanism

- 5.11. The ACCC recommends that digital platforms should be required to provide a way for individuals and entities to notify the platform about suspected scams, harmful apps and fake reviews and that platforms must promptly act in response to these reports. However, in DIGI's experience, these and other mechanisms already exist on our relevant members'

services¹². We therefore question whether such a scheme would drive improvements on mainstream digital service providers where both the 'notice' ("platforms must provide user-friendly mechanisms for individuals and entities to report scams, harmful apps, or suspected review manipulation") and 'action' ("platforms must promptly respond to notices, for example, by removing suspected scam content, harmful apps or fake reviews or providing advice about the basis on which the content is permitted") elements are already occurring.

- 5.12. A legally binding 'notice and action' scheme raises important questions about who should be responsible for receiving the notice. Mainstream digital services and brands often have their own names misused and cited in scams in an effort to convince consumers of their veracity. For example, The ACMA has reported a sharp rise in scammers falsely purporting to represent eBay¹³. A formal notice and action scheme may cause confusion in these cases of impersonation as to who would be responsible for taking action: are digital platforms meant to receive notice and take action on scams leveraging their brand being distributed via other channels, such as SMS? This example again underscores the need for holistic solutions that address scams across a wider range of sectors and services.
- 5.13. The 'communication' element of the scheme ("platforms must promptly notify the reporting person and potentially affected consumers of processes and actions undertaken in response to the report") also raises critical implementation questions. Platforms may not be able to proactively contact everyone who may have viewed a scam ad, often because this activity occurs 'off platform', or because services may only collect aggregate data about viewers of advertising.
- 5.14. We are concerned about the practicalities of the 'redress' element of the proposal ("platforms should be required to provide redress to users who have been harmed by the platform failing to meet its obligations under these measures"). The distributed supply chain of scam content and proliferation, its tendency to move from service to service and off platform, makes the attribution of responsibility extremely challenging. Fundamentally, scams are initiated and distributed by criminals who should bear ultimate responsibility, rather than the service providers that are working constructively and extensively with the Australian Government to mitigate, address and educate about this criminal activity.
- 5.15. Finally, it is worth pointing out that there is some duplication with a proposed 'notice and action' scheme in relation to fake reviews in light of the outcome of the Stage 2 Review of the Model Defamation Provisions. The defamation laws, to come into effect on January 1, 2024, will require internet intermediaries to have a simple complaints process for allegedly defamatory content in order to be provided with a new innocent dissemination

¹² Relevant DIGI members provide reporting tools where content can be reported for a wide range of reasons, including scams. User reports are reviewed by teams of human moderators, and addressed as quickly as possible in line with the service's policies and applicable law. Enforcement actions include the removal of content, and the suspension or removal of accounts that have instigated it. In relation to its administration of the ACPDM, DIGI has created a list of that code's signatories' relevant reporting tools in relation to mis- and disinformation which provides some information around how various reporting tools can be accessed. See <https://digi.org.au/disinformation-code/>

¹³ ACMA (2021), *Scam alert: ACMA warns of eBay scam phone calls*, accessed at <https://www.acma.gov.au/articles/2021-03/scam-alert-acma-warns-ebay-scam-phone-calls>

defence¹⁴.

6. External ombudsman scheme

- 6.1. DIGI is supportive in principle of the establishment of a well-designed complaint handling scheme, such as an ombudsman, that allows consumers and small businesses to raise and resolve certain types of complaints.
- 6.2. While our members have extensive internal channels through which they resolve consumer complaints, we recognise that in some cases complaints handling schemes can assist in the resolution of issues that cannot be resolved through those existing channels. For example, complaints that involve multiple service providers would be best be handled through an external scheme. This is one of the reasons why we would encourage an external ombudsman scheme to have a broad cross-sectoral purview in order to meaningfully address consumer concerns.
- 6.3. Complaints handling schemes should have a clearly defined scope. The scheme also needs to recognise that the nature of digital platform complaints can differ in complexity and dimension from those received by a telecommunications company or a bank. As well as transactional complaints around scams, products or advertising, digital platforms are also required to review and respond to complaints about a wide range of content decisions and enforcement of their policies. A possible focus of the external scheme could be transactional complaints, such as those from advertisers or small businesses.
- 6.4. We would like to offer DIGI as a resource to the Government in further work to design an effective external ombudsman scheme. It is important that any complaints handling scheme is underpinned by industry consultation and comprehensive user research. In its analysis of dispute resolution on digital platforms, the Interim Report quotes the press release from research conducted by the Australian Communications Consumer Action Network (ACCAN) has found that nearly three in four Australians would like better complaints handling from digital platforms¹⁵. The press release states “digital platforms such as Facebook, WhatsApp, eBay, and Service NSW” and that “Digital platforms were defined as websites and apps such as social media, Government online services, job search sites, dating apps, messaging apps and online marketplaces.” This means that the data includes Australians’ interactions with Government services such as ServiceNSW and myGov, many of which were being used more frequently during the pandemic. Therefore, this data does not provide a conclusive picture of Australians’ experiences of dispute resolution on privately-owned digital service providers. However, this research does serve to underscore the importance of a macro view across a wide range of services to properly serve consumer grievances.
- 6.5. Scoping should also closely examine the extensive dispute resolution infrastructure across Australian consumer and online safety law, and regulatory bodies such as the

¹⁴ Attorney-General’s Department, Standing Council of Attorneys-General communiqués December 2022, accessed at <https://www.ag.gov.au/about-us/publications/standing-council-attorneys-general-communicues>

¹⁵ Australian Communications Consumer Action Network (ACCAN), Media release 29/11/21, *New research finds nearly three-quarters of Australians want better complaints handling from digital platforms*, accessed at <https://accan.org.au/media-centre/media-releases/1942-new-research-finds-nearly-three-quarters-of-australians-want-better-complaints-handling-from-digital-platforms#:~:text=New%20research%20from%20the%20Australian,%2C%20eBay%2C%20and%20Service%20NSW.>

OAIC, the ACMA, the Office of the eSafety Commissioner and the State Offices of Fair Trading. Under relevant laws, regulators have significant powers to take strong enforcement action in the courts on behalf of consumers, where they determine this to be necessary. Australia also has a wide variety of alternative dispute resolution mechanisms including small claims tribunals that deal effectively with a range of consumer issues. An in-depth analysis of this existing infrastructure will enable an understanding of the gap that an external ombudsman scheme would be best placed to address.

Summary of recommendations in this section

- F. DIGI strongly supports the establishment of the NASC. Its goals should include i) streamlining and improving consumer support for scams ii) a research focus to better explore the life-cycle of scams and victim susceptibility and iii) deepening public-private and cross-sectoral relationships that aid in addressing, mitigating and increasing consumer education of scams.
- G. Policy proposals to meaningfully improve consumer protection in relation to scams need to be holistic in involving a range of service providers across different sectors (e.g. digital platform services, the financial and telecommunications industry). They must recognise the complexity of scam life-cycles and relevant supply chains, and examine a range of regulatory and non-regulatory targeted solutions. We do not consider the 'notice and action' proposal to be consistent with this approach.
- H. DIGI supports the establishment of a well-designed complaint handling scheme, such as an ombudsman, that allows consumers and small businesses to raise and resolve certain types of complaints wherever they arise, in a technology neutral approach. This scheme should be scoped in close consultation with industry and other expert stakeholders.

Governance & priority and alignment with international developments

7. Industry codes

- 7.1. While we do not have a view on the code proposals or competition recommendations advanced in the Interim Report, DIGI has significant general experience in code development with digital service providers. We developed *The Australian Code of Practice on Disinformation and Misinformation* (ACPD), and co-led the development of proposed codes under the Online Safety Act. We would be happy to discuss our experiences with the Treasury to aid any general exploration of codes as a regulatory tool.
- 7.2. There are a range of approaches to codes. In our experience, whether developed by industry or the regulator, the best results are achieved when the process is conducted as a cooperative undertaking. A principles based approach enables the future proofing

codes to changes in the digital environment, and encourages companies to continue to develop innovative solutions to meet their requirements.

8. Aligning with established global standards

- 8.1. In general, we believe that regulatory frameworks in relation to digital service providers in Australia should align with established global standards, rather than emerging policy proposals in other jurisdictions. Alignment with established standards can assist with compliance efforts for companies that have a presence in multiple jurisdictions, as it means that existing efforts can be largely replicated. While there are emerging major international regulatory regimes, there is an opportunity for Australia to wait and evaluate their impact as they become more established, before determining our approach.
- 8.2. DIGI cautions against a sole focus on emerging overseas regulatory developments to justify domestic regulation, without consideration of the Australian regulatory context, which often has foundational differences. This can lead to bias toward new regulation to address consumer concerns, rather than more efficient approaches that address emerging issues and gaps through existing regulatory frameworks.
- 8.3. Any differences from established global standards should be grounded in evidence of differences in relation to the Australian context that necessitates a departure. DIGI welcomes the acknowledgement within the Treasury Consultation Paper that, in a global context, Australia is a smaller market than many of the jurisdictions at the forefront of digital platform regulation. As well as the size of the market, the size of Australia's technology sector needs to be considered. As noted, we encourage the Government to take into account DIGI and other research that demonstrates that Australia features towards the bottom of OECD rankings in relation to the size of our technology sector¹⁶.

Summary of recommendations in this section

- I. If considering codes as a regulatory tool, DIGI encourages further exploration with organisations with expertise in relevant code development and administration, such as DIGI. Consultation and principled-based approaches ensure that codes for the digital industry are future-proofed as technology evolves.
- J. Regulatory frameworks in relation to digital service providers in Australia should align with established global standards, rather than emerging policy proposals in other jurisdictions.
- K. Focused approaches that address gaps in existing regulatory frameworks are more conducive to creating the policy settings that enable Australia to grow its technology sector and become a leading digital economy.

¹⁶ See AlphaBeta (now Accenture), (2019), *Australia's Digital Opportunity*, accessed at: <https://digi.org.au/wp-content/uploads/2019/09/Australias-Digital-Opportunity.pdf>.