

Cyber Update

JANUARY 2020

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Cyber claims likely to rise following announcement of digital regulatory reform and Australia's first privacy class action decision

AT A GLANCE:

- In December the Australian Government announced its reform package in response to the ACCC's digital platforms inquiry.
- It outlines a series of reforms to address the market power, transparency and fair competition associated with tech giants.
- For insurers the strengthening of regulations is likely to lead to an increase in claims triggering statutory liability sections of a cyber policy and third party claims arising from data breaches.
- Plaintiff firms will be further encouraged to pursue cyber claims through the courts given news of the NSW Ambulance workers class action settlement of \$275,000 following a major data breach at the NSW Ambulance Service.

On 11 December, the Australian Government announced its reform package in response to the ACCC's digital platforms inquiry.

The package, which is detailed in the *Government Response and Implementation Roadmap for the Digital Platforms Inquiry* report, outlines a series of reforms designed to address the market power, transparency and fair competition associated with tech giants, such as Google and Facebook.

These reforms include an immediate commitment to establishing a new unit within the ACCC that has enforcement powers and scope to investigate the activities of digital platforms. The ACCC has also been directed to develop a voluntary code of conduct to ensure fair dealings between tech giants and media businesses.

The reform package also includes a staged process to reform media regulation to create uniform classification and Australian content streaming rules to harmonise the regulation between old and new forms of media.

In announcing the reforms the Prime Minister said the Government wanted to ensure Australia had a successful digital economy while also protecting consumers and competition. The first priority will be looking at the supply of online advertising and ad-tech services – given the growing concerns globally about the significant market power tech giants are able to acquire through online advertising and the collection of personal information.



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The report also refers to the Government's existing privacy reform agenda, announced in March 2019, which involves increasing the maximum penalties under the *Privacy Act* to match penalties under the Australian Consumer Law (including turnover penalties) and the OAIC's development of a binding privacy code for digital platforms.

That privacy code will require social media and online platforms to be more transparent about data sharing, meet best practice consent requirements when collecting, using and disclosing personal information and to stop using or disclosing personal information on request. These reforms are expected to be introduced in 2020.

Interestingly, the ACCC's recommendations to align Australia's privacy laws with GDPR, such as introducing a direct right of action for individuals and a statutory tort for invasion of privacy, are under an 18 month period of consultation. With tough new laws in California's Consumer Privacy Act shortly coming into effect, a delay of 18 months to toughen the Privacy Act is likely to be heavily criticised as privacy best practice otherwise continues to evolve quickly around the world.



AUD275,000 NSW AMBULANCE WORKERS SETTLEMENT

The program is under the direction of Treasurer Josh Frydenberg who was reported as saying: "The companies are on notice. The government is not messing around. We will not hesitate to act." This sentiment has already been seen by the [ACCC](#), which announced it was suing Google over misleading consumers about its collection and use of personal location data at the end of 2019.

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LESSONS FOR INSURERS & INSUREDS

For insurers, the strengthening of regulations is likely to lead to an increase in regulatory investigations and claims triggering statutory liability sections of a cyber policy. There are also likely to be more third party claims arising from data breaches given last week's news of the NSW Ambulance workers settlement with a \$275,000 class action payout, which followed a major data breach at the NSW Ambulance Service.

The NSW Ambulance case is the first privacy class action in Australia and follows the conviction of a NSW Ambulance contractor who had sold the worker's compensation files of 130 former and current employees, which included personal and medical information, to personal injury lawyers in 2016.

While we are not aware of any penalties in Australia yet, it will be interesting to see whether regulatory reform is eventually extended to mirror the recent changes banning insurance for WHS penalties (refer to our recent article [NSW outlaws insurance for WHS penalties](#)).

To reduce cyber breach-related risks of significant financial and reputational loss, as well as regulatory non-compliance, insureds are encouraged to have strong breach response plans in place.

Need to know more?

For more information please contact our authors.



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