



**Australian Government**  
**Attorney-General's Department**  
**Deputy Secretary**  
**Integrity and International Group**

19/1975-8

Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

Email: helpdesk-OBPR@pmc.gov.au

Dear Mr Lange

**Regulation Impact Statement for Early Assessment**

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for the proposal to amend the *Privacy Act 1988* (Privacy Act) to introduce a binding privacy code for social media and online platforms, and to strengthen penalties and the Office of the Australian Information Commissioner's (OAIC's) enforcement powers and ability to share information.

I believe the RIS meets the requirements set out in the *Australian Government Guide to Regulatory Impact Analysis* and is consistent with the six principles for Australian Government policy makers.

In particular, the RIS addresses the first four RIS questions:

- What is the problem? – The growth of social media and online platforms has posed new challenges to the protection of individuals' privacy in the digital age, including bargaining power imbalances, information asymmetries between platforms and consumers' inherent difficulties in accurately assessing the current and future costs of providing their user data. Further, the existing protections and penalties for misuse of Australians' personal information under the Privacy Act are inadequate to ensure Australians are protected online and fall short of community expectations.
- Why is government action needed? – Although organisations subject to the Privacy Act must comply with the Australian Privacy Principles (APPs), the APPs do not effectively address the specific challenges posed by social media and online platforms. While the APPs apply broadly to entities subject to the Privacy Act, the community expects stronger and more specific protections to apply to the handling of their personal information in an online context. Government action is needed to address these challenges, and to strengthen enforcement measures and penalties to promote effective deterrence and ensure the privacy regulator has sufficient powers to ensure compliance.

- What policy options are you considering? – The RIS will only consider one option, as the government made an election commitment to strengthen the Privacy Act by introducing the binding code, and increasing penalties and enforcement measures. The RIS will assess how the draft *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021* (draft Bill) gives effect to this commitment.
- What is the likely net benefit of each option? – The draft Bill will enhance privacy protection by addressing the specific privacy challenges posed by social media and online platforms without impeding innovation and the economic benefits of social media and online platforms, and would give users more control over their personal information. Strengthening penalties and enforcement mechanisms across the scope of the Privacy Act will promote public confidence and trust that the OAIC is able to effectively protect Australians' privacy.

In addition:

- the RIS contains an appropriate consultation plan; and
- the change in regulatory burden on business and individuals has been quantified using the Regulatory Burden Measurement framework. The consultation process will be used to identify opportunities to reduce regulatory costs before the legislation is settled for introduction in Parliament.

I submit the certified RIS to the Office of Best Practice Regulation for early assessment, consistent with best practice.

The action officer for this matter is Amy Jarvoll who can be contacted on 6141 3297.

Yours sincerely



Sarah Chidgey  
Deputy Secretary, Integrity and International Group  
Attorney-General's Department  
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