

New tougher penalties to apply in Australia for breach of privacy

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What is changing in privacy law in Australia?

The Australian Government has announced that it will implement new laws with tougher penalties for breaches of privacy and other measures to ensure safety online.

The Attorney-General, Christian Porter, and Minister for Communications and the Arts, Mitch Fifield, announced changes would be made to the Privacy Act 1988 (Cth) of Australia (**Privacy Act**) which would ensure that major social media companies took action to protect the personal information they collect and for children in particular.

Although draft legislation has not yet been produced, the Australian Government foreshadowed in its media release for the new initiative that the amendments to the Privacy Act would bring Australia more closely in line with some of the tougher privacy regimes around the world, such as in Europe. The new measures will involve the following:

- Higher penalties – so that the maximum penalty of AUD\$2.1 million for serious or repeated breaches will increase to:
 - AUD\$10 million; or
 - three times the value of “any benefit obtained through the misuse of information”; ¹or
 - 10 per cent of the breaching entity's annual Australian turnover

whichever is the greater;

- New infringement notice powers (backed by new penalties of up to AUD\$63,000) for failure to cooperate with efforts to resolve minor breaches to be given to the Australian privacy regulatory, the Office of the Australian Information Commissioner (OAIC) together with other powers to be given to the OAIC to publish prominent notices about specific breaches and to force those directly affected by the breach to be advised;
- New provisions which will oblige social media and online platforms to stop using or disclosing an individual's personal information upon request;
- New rules to protect the personal information of children and other “vulnerable groups”. ²
- A new code for social media and online platforms which “trade” in personal information to require greater transparency about data sharing and requiring more specific consent of users to the collection, use and disclosure of personal information. The Government’s statement referred to ensuring such platforms have mechanisms to stop using an individual's personal information if a user requests.

The new regime will be backed up by greater enforcement – the OAIC will be provided with an additional AUD\$25

million to investigate and respond to breaches of privacy.

What action should companies with Australian users take?

For now, companies with Australian users should monitor developments. The Australian Government has said that the new legislation will be drafted for consultation later in 2019 and that it will also incorporate findings of the current Digital Platforms inquiry by the Australian Competition and Consumer Commission (the ACCC, Australian's competition and consumer protection regulator) which is due to issue its final report in June 2019.

Please contact Robyn Chatwood, Partner, in the Dentons Australian Privacy practice group, or your usual Dentons contact if you need further information or wish to be added to our list to receive updates on the developments.

1. Per the media release of The Hon. Christian Porter MP (Attorney-General), Senator The Hon Mitch Fifield (Minister for Communications and Minister for Arts) dated 24 March 2019 "Tougher penalties to keep Australians safe online" at <https://www.attorneygeneral.gov.au/Media/Pages/Tougher-penalties-to-keep-australians-safe-online-19.aspx> ↩

2. As above.↩

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