*Sam Alexander**

# A UNIQUELY AUSTRALIAN APPROACH: A THEMATIC ANALYSIS OF THE NORMATIVE FOUNDATIONS OF AUSTRALIA'S APPROACH TO THE REGULATION OF THE INTERNET

## Abstract

This article seeks to understand the normative foundations of Australia's approach to the regulation of the internet and, in particular, online content. To do so effectively, this article conducts a reflexive thematic analysis of various documents produced by Australian government bodies, committees, and individuals since the commencement of the Australian Competition and Consumer Commission's *Digital Platforms Inquiry* in December 2017. In doing so, this article identifies three normative themes that underpin Australia's approach to internet regulation, namely: (1) pragmatic harm reduction; (2) fairness; and (3) democratic security. This article argues that these themes represent a uniquely Australian approach to regulation. Whilst there is some overlap between Australia's approach and wider global events, it is suggested that the themes identified are consistent with norms recognised as a part of Australian legal and political culture since Federation. This finding suggests that those looking to influence or understand internet policy in Australia should consider the domestic normative environment and not just international policy debates.

## I Introduction

On 17 February 2021, news circulated around the world that Facebook[1] had banned access to Australian news content. The ban was in response to the Commonwealth Government's News Media and Digital Platforms Mandatory Bargaining Code ('Bargaining Code').[2] At the time, Facebook considered that the Bargaining Code 'fundamentally misunderstands the relationship between our

* PhD Candidate, Swinburne Law School, Swinburne University of Technology. I would to thank Benjamen Gussen, Áron Perényi, Amanda Scardamaglia, the editors and the two anonymous referees for their very helpful comments. This work was supported by the receipt of an Australian Government Research Training Program Scholarship.

1 Since the time of writing, Facebook have changed their company name to 'Meta Platforms Incorporated'.

2 Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth).

platform and publishers who use it to share news content'.[3] Shock was expressed at both the ban and the Bargaining Code. For example, Sir Tim Berners-Lee contended that the Bargaining Code risked 'breaching a fundamental principle of the web'.[4] However, as quickly as the ban was implemented, it was abandoned by Facebook five days later, on 22 February 2021.[5] The return to normality was a consequence of the Commonwealth Government's willingness to amend the law and come to a negotiated outcome with Facebook.

This short episode is just one of many examples of Australia's approach to regulating the internet making international news in recent years. Whilst there has been important scholarly research into some of these events,[6] this article attempts to go further and explain the unique legal and political cultural circumstances of Australia that established them. Specifically, this article seeks to investigate the norms and features of Australian legal and political culture that have underpinned its approach to the regulation of the internet in the modern era.

The article conducts a reflexive thematic analysis of 54 documents (2,363 pages) produced by Australian government bodies, committees and individuals since the beginning of its most recent reforming process, namely the commencement of the Australian Competition and Consumer Commission's ('ACCC') *Digital Platforms Inquiry* on 4 December 2017.[7] Overall, the study spans from 4 December 2017 to 12 March 2021. The *Digital Platforms Inquiry* represents one of the key sources of legal reform in this space. It occurred contemporaneously with increased scrutiny of online activity by other government agencies and bodies in Australia, including the last reform process considered in this article, namely the *Online Safety Act 2021*

3 William Easton, 'Changes to Sharing and Viewing News on Facebook in Australia' (Media Release, Facebook, 17 February 2021) <https://about.fb.com/news/2021/02/changes-to-sharing-and-viewing-news-on-facebook-in-australia/>.

4 Sir Tim Berners-Lee, Submission No 46 to Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020* (18 January 2021) 1.

5 William Easton, 'Changes to Sharing and Viewing News on Facebook in Australia' (Media Release, Facebook, 22 February 2021) <https://about.fb.com/news/2021/02/changes-to-sharing-and-viewing-news-on-facebook-in-australia/>.

6 See, eg: Evelyn Douek, 'Australia's "Abhorrent Violent Material" Law: Shouting "Nerd Harder" and Drowning Out Speech' (2020) 94(1) *Australian Law Journal* 41; Terry Flew et al, 'Return of the Regulatory State: A Stakeholder Analysis of Australia's Digital Platforms Inquiry and Online News Policy' (2021) 37(2) *Information Society* 128; Terry Flew and Derek Wilding, 'The Turn to Regulation in Digital Communication: The ACCC's Digital Platforms Inquiry and Australian Media Policy' (2021) 43(1) *Media, Culture and Society* 48.

7 Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Final Report, June 2019) ('*Digital Platforms Inquiry*'). For the Ministerial Directive to hold the Digital Platforms Inquiry, see Treasurer (Cth), *Inquiry into Digital Platforms* (4 December 2017).

(Cth) ('*OS Act*'). The date of the last significant document considered is 12 March 2021.[8]

Overall, this article identifies three themes that underpin Australia's approach to the regulation of the internet: (1) pragmatic harm reduction; (2) fairness; and (3) democratic security. The specifics of all three themes are discussed in Parts IV and V of this article, but it is important to note that these norms are a distinctively Australian combination. Ideas historically associated with Australian legal and political culture, such as utilitarianism, egalitarianism and parliamentary supremacy still resonate strongly. Alternative universal norms (such as human rights) are present, but are secondary to these other concerns.

Part II of this article considers the context of this study, in particular, the history of the reports, speeches and other documentation investigated. Part III outlines the methodology underpinning this article. Part IV outlines the results of the thematic analysis and discusses the findings. Part V discusses the key insights from the study and offers suggestions for future research and approaches to policy formation. Finally, Part VI provides some concluding comments.

## II Historical Context

This Part seeks to investigate the historical context and background of the various documents examined in this article.

Over the course of the last two decades, the internet landscape has evolved. Specifically, internet traffic and consumer activity have become increasingly concentrated on a small number of large platforms. Some contend that this trend suggests the internet is no longer an 'open' net but rather a landscape dominated by a few monopolies.[9] Companies such as Facebook, Apple, Netflix, Microsoft, Amazon and Google (various acronyms have been used in financial commentary to describe this group, including 'FANMAG' and 'FAANG') are commonly seen as having benefited most from this trend.[10] Their success and that of other internet-based businesses, ranging from Alibaba to Uber, are generally accepted as coming at the expense of legacy consumer-facing business models. Famously successful enterprises of the 20th century in the media and retail spaces have collapsed in a matter

8 Senate Environment and Communications Legislation Committee, Parliament of Australia, *Online Safety Bill 2021 [Provisions] and Online Safety (Transitional Provisions and Consequential Amendments) Bill 2021 [Provisions]* (Report, March 2021) ('*Online Safety Report*').

9 Terry Flew, Fiona Martin and Nicolas Suzor, 'Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance' (2019) 10(1) *Journal of Digital Media and Policy* 33, 34.

10 Ibid.

of years,[11] and many remaining leaders of legacy businesses question the viability of their industries.[12]

As this economic disruption is happening, a number of 'harms' are being identified as occurring on or arising from large platforms and the internet more generally. These include hate speech, mis/disinformation, harassment, and privacy concerns.[13] Empirical evidence supports justification for some of these concerns. For example, a recent study found that 'growing shares of Americans [online] report experiencing more severe forms of harassment, which encompasses physical threats, stalking, sexual harassment and sustained harassment'.[14] Social media is commonly cited as the venue where individuals are most likely to experience harassment.[15] Evidence also suggests a number of these online harms have real world consequences. For example, an independent assessment commissioned by Facebook, following claims that the platform was used to incite genocide against the Rohingya minority in Myanmar, found that 'Facebook has become a means for those seeking to spread hate and cause harm, and posts have been linked to offline violence'.[16]

In response to this economic disruption and the harms of the internet, the world has experienced a wave of regulation.[17] It has been described as the 'public

---

11 See, eg, Barry Berman, 'Flatlined: Combatting the Death of Retail Stores' (2019) 62(1) *Business Horizons* 75.

12 See, eg, Jill Lepore, 'Does Journalism Have a Future?' (28 January 2019) *The New Yorker*. In the article former editor-in-chief of the *Guardian*, Alan Rusbridger, is quoted as saying: 'We are, for the first time in modern history, facing the prospect of how societies would exist without reliable news.' See also Alan Rusbridger, *Breaking News: The Remaking of Journalism and Why It Matters Now* (Farrar, Straus and Giroux, 2018).

13 See, eg: Danielle Keats Citron and Daniel J Solove, 'Privacy Harms' (2022) 102(2) *Boston University Law Review* (forthcoming); Nicolas Suzor, Bryony Seignior and Jennifer Singleton, 'Non-Consensual Porn and the Responsibilities of Online Intermediaries' (2017) 40(3) *Melbourne University Law Review* 1057; Nicolas Suzor et al, 'Human Rights by Design: The Responsibilities of Social Media Platforms to Address Gender-Based Violence Online' (2019) 11(1) *Policy and Internet* 84; Rosalie Gillett, 'Intimate Intrusions Online: Studying the Normalisation of Abuse in Dating Apps' (2018) 69(1) *Women's Studies International Forum* 212; Mary Anne Franks and Ari Ezra Waldman, 'Sex, Lies, and Videotape: Deep Fakes and Free Speech Delusions' (2019) 78(4) *Maryland Law Review* 892.

14 Emily A Vogels, 'The State of Online Harassment' (Research Report, Pew Research Centre, 13 January 2021) 4.

15 Ibid 5.

16 BSR, *Facebook in Myanmar* (Project Report, October 2018) 24.

17 Flew, Martin and Suzor (n 9) 34.

health era' of internet regulation,[18] or the 'techlash'.[19] Others have noted that the regulatory response across the world has not been consistent, with differing cultures, including legal and political cultures, being significant influences on the differentiation.[20]

Australia has been a part of this global experience but has adopted its own approach. Australian jurists, political leaders and policymakers have generally not embraced the commercialisation of the internet with the same passion as the United States,[21] and the free speech enhancing capacity of the internet has been questioned and sometimes distrusted.[22] However, since then Treasurer, Scott Morrison, announced the ACCC's *Digital Platforms Inquiry*, Australia has approached the regulation of the internet with renewed vigour. Thousands of pages of documents have been produced providing scholars with potentially greater insights into the views of Australian policymakers in this regulatory environment.

The *Digital Platforms Inquiry* itself was launched 'almost by accident'.[23] Broadly speaking, a key policy objective of the Turnbull Government was the reform of Australia's media ownership laws. In particular, the Turnball Government sought to repeal the so-called 'two-out-of-three cross-media control rule' which broadly prevented a person from controlling more than two of the regulated media platforms (commercial television, commercial radio and associated newspapers) in any commercial radio licence area.[24] The repeal of this rule was politically contentious

---

18 John Bowers and Jonathan Zittrain, 'Answering Impossible Questions: Content Governance in an Age of Disinformation' (2020) 1(1) *Harvard Kennedy School Misinformation Review* 1, 3; Jonathan Zittrain, 'Three Eras of Digital Governance' (Research Paper, Harvard Law School, 19 September 2019) 6.

19 Eve Smith, 'The Techlash against Amazon, Facebook and Google and What They Can Do', *The Economist* (online, 20 January 2018) <https://www.economist.com/briefing/2018/01/20/the-techlash-against-amazon-facebook-and-google-and-what-they-can-do>.

20 See, eg: Claudia E Haupt, 'Regulating Speech Online: Free Speech Values in Constitutional Frames' (2021) 99(2) *Washington University Law Review* 751; Mark A Lemley, 'The Splinternet' (2021) 70(6) *Duke Law Journal* 1397.

21 Copyright regulation is a good example of this approach. See, eg: Sam Alexander, 'A Quiet Harbour: Finding a Balanced Approach to the Copyright Liability of Online Service Providers' (2020) 32(1) *Bond Law Review* 90; Amanda Scardamaglia, 'A Legal History of Lithography' (2017) 26(1) *Griffith Law Review* 1.

22 See, eg, *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575. 'The Internet, which is no more than a means of communication by a set of interconnected computers, was described, not very convincingly, as a communications system entirely different from pre-existing technology': at 647 [180] (Callinan J).

23 Flew and Wilding (n 6) 51.

24 See *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* (Cth) sch 2. See also Tyson Wils, 'Media and Broadcasting in the Digital Age' (Brief, Parliamentary Library, Parliament of Australia, July 2019).

and opposed by the opposition.[25] To pass the Bill through the Senate, the Turnball Government needed the support of crossbench senators, including the centrist Nick Xenophon Team ('NXT'). As a part of their deal with NXT, the Turnball Government promised to investigate the powers of digital platforms and their impact on domestic journalism.[26] A couple of months after the passing of the Bill, the *Digital Platforms Inquiry* was announced.

In his directions, the Treasurer advised that the ACCC should

> hold an inquiry into the impact of digital search engines, social media platforms and other digital content aggregation platforms (*platform services*) on the state of competition in media and advertising service markets, in particular in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.[27]

Shortly after its commencement, however, the *Digital Platforms Inquiry* took on a life of its own — independent of its political history — with the ACCC adopting a scope wider than many originally anticipated.[28] Ultimately, after 18 months of investigations, public consultations and public remarks by senior ACCC executives, the ACCC released its 623-page report on 26 July 2019. The recommendations covered areas as diverse as merger law, media reform, privacy, taxation and copyright. The Commonwealth Government responded to the report on 12 December 2019, accepting some recommendations, rejecting some recommendations, and recommending further reports and investigations.[29] In other words, the *Digital Platforms Inquiry* sparked numerous other reforms and investigations, which are the subject of study in this article.

In addition, to the stream of reforms arising from the Digital Platforms Inquiry, a number of other reforms have emerged in response to various online harms and crises. For example, in fulfilling its 2013 election commitment, the Abbott Government established the Office of the Children's eSafety Commissioner with the ambit of 'promot[ing] online safety for children',[30] and administering a notice-and-takedown system for cyber-bullying content.[31] Over the course of the Office's

---

25 Commonwealth, *Parliamentary Debates*, House of Representatives, 20 June 2017, 7098 (Michelle Rowland).

26 Flew and Wilding (n 6) 52.

27 Treasurer (Cth) (n 7) (emphasis in original).

28 Flew and Wilding (n 6) 53.

29 See Commonwealth Government, *Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry* (Report, 12 December 2019) ('*Regulating in the Digital Age*').

30 Enhancing Online Safety for Children Bill 2014 (Cth) cl 15(1)(b). See also Liberal–National Coalition, *The Coalition's Policy to Enhance Online Safety for Children* (Policy Brief, September 2013).

31 *Enhancing Online Safety Act 2015* (Cth) pt 4, as at 22 January 2022. See also Gail Mason and Natalie Czapski, 'Regulating Cyber-Racism' (2017) 41(1) *Melbourne University Law Review* 284, 311–12.

existence, the scope of the Commissioner has expanded to address a wide net of harms.[32]

Most recently, following a 2018 review,[33] and concern that there was a 'significant disconnect between the expectations of Australians and what is delivered by the internet industry today',[34] the Australian Government is now consolidating and extending the remit of the eSafety Commissioner with the legislating of the *OS Act*. New powers under the *OS Act* include: a cyber-abuse take-down scheme for Australian adults; a take-down notice system for egregious illegal content hosted outside of Australia but accessible in Australia; and a website-blocking power, which allows the Commissioner to issue a written request to an internet service provider to disable access to material that depicts, promotes, incites or instructs in abhorrent violent conduct.[35] These reforms are also the subject of this article.

## III Method & Approach to Analysis

Having ascertained the contextual circumstances of the study, it is now necessary to outline the research method that will be employed to investigate the norms and features of Australian legal and political culture that underpin the abovementioned reforms. Specifically, this Part outlines the adopted approach to data collection and data analysis — namely thematic analysis.

### A *Data Collection*

The documentation considered in this study arises from reviews and reforms conducted since 4 December 2017 — the date of the Ministerial Directive to hold the *Digital Platforms Inquiry*.[36] As alluded to above, this date was selected because the *Digital Platforms Inquiry* represents one of the primary sources of legal reform in this space and because it occurred contemporaneously with increased scrutiny of online activity by other government agencies and bodies in Australia.

---

32 The Office of the Children's eSafety Commissioner was renamed the Office of eSafety Commissioner and its scope expanded to cover all online safety for Australians, not just children: see *Enhancing Online Safety for Children Amendment Act 2017* (Cth). The eSafety Commissioner was also subsequently given authority over notice-and-takedown systems for non-consensually shared intimate images and abhorrent violent material: see *Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Act 2018* (Cth); *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* (Cth).

33 Lynelle Briggs, *Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme)* (Report, October 2018).

34 Paul Fletcher, 'Keeping Australians Safe Online' (Speech, National Press Club, 11 December 2019).

35 See *Online Safety Act 2021* (Cth) ss 88, 95, 109, 114.

36 Treasurer (Cth) (n 7).

Reviews and reforms having a material impact on businesses primarily operating online were selected. 'Material' in this context means that the relevant law could reasonably be expected to influence the decision-making of the business. Reviews and reforms were also limited to those conducted by Commonwealth agencies and bodies, thereby removing the potential for state and territory parochialism and regionalism to bias the study. The relevant reviews and reforms considered are listed in Table 1:

**Table 1: Reviews and Reforms Conducted Since 4 December 2017**

| **Lead Agency / Body** | **Reform Title** |
|---|---|
| ACCC | Digital Platforms Inquiry |
| ACCC | Digital Platform Services Inquiry |
| Attorney-General's Department | Privacy Act Review |
| Attorney-General's Department | Sharing of Abhorrent Violent Material |
| Australian Communications and Media Authority | Misinformation and News Quality |
| Department of Infrastructure, Transport, Regional Development and Communications | Copyright and Service Providers |
| Department of Infrastructure, Transport, Regional Development and Communications | Non-Consensual Sharing of Intimate Images |
| Department of Infrastructure, Transport, Regional Development and Communications | Online Safety |
| The Treasury and ACCC | Mandatory News Media Bargaining Code |

The documentation considered included: reports; draft bills; explanatory memoranda; factsheets; and speeches (including second reading speeches). In total 54 documents (2,363 pages) were considered. A complete list is outlined in the Annexure to this article.

### B *Thematic Analysis*

As defined by Virginia Braun and Victoria Clarke, thematic analysis 'is a method for systematically identifying, organizing, and offering insight into patterns of meaning (themes) across a data set'.[37] Braun and Clarke contend that their approach — the approach utilised in this article — is *reflexive* (ie, flexible) and is specifically designed

[37] Virginia Braun and Victoria Clarke, 'Thematic Analysis' in Harris Cooper (ed), *APA Handbook of Research Methods in Psychology, Vol 2: Research designs: Quantitative, Qualitative, Neuropsychological, and Biological* (American Psychological Association, 2012) 57, 57 ('Thematic Analysis').

for qualitative analysis.[38] The approach used in this article is also 'inductive', that is, its analysis is grounded in the data.[39]

Braun and Clarke propose a six-step approach to conducting analysis.[40] Such an approach has been utilised in this study. The six steps as described by Braun and Clarke are summarised in Table 2:

**Table 2: Six-Step Approach as Described by Braun and Clarke**

| Phase | Description of the Process |
|---|---|
| 1. Familiarising with the data | Immersion in the documentation and associated initial notetaking |
| 2. Generating initial codes | Coding of the key points identified in a systematic fashion |
| 3. Searching for themes | Collating and reviewing the data to identify similarities and overlaps |
| 4. Reviewing themes | Reviewing the themes against the coded data and consideration of the overall interaction between themes |
| 5. Defining and naming themes | Analysis to identify the specifics of each theme |
| 6. Producing the article | Drafting a compelling story of the data derived from the previous analysis |

### 1 *Familiarising with the Data*

As a first step, the documentation was read analytically and critically, and notes were taken. The aim of this process was to become intimately familiar with the documents. To ensure the data was reviewed analytically and critically, two core research questions were kept in mind. First, what normative assumptions underpin the words? Second, what values do the words represent?

### 2 *Generating Initial Codes*

The notes derived from Phase 1 were then coded in a systematic fashion. Codes are 'entities that capture (at least) one observation, [and] display (usually just) one

38 Virginia Braun and Victoria Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' (2021) 18(3) *Qualitative Research in Psychology* 328, 330 ('One Size Fits All?').

39 Ibid 331.

40 Braun and Clarke, 'Thematic Analysis' (n 37) 60–9; Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77, 86–7. See also Lorelli S Nowell et al, 'Thematic Analysis: Striving to Meet the Trustworthiness Criteria' (2017) 16(1) *International Journal of Qualitative Methods* 1, 4.

facet'.[41] That is, they provide a label for the specific item of data. Codes were derived from a mix of the language of the documentation or through personal interpretation. Some examples of coding of the *Digital Platforms Inquiry Report* are provided in Table 3:

**Table 3: Example of the Coding of the *Digital Platforms Inquiry Report***

| Code | Extract |
|---|---|
| Equity before the law | The imbalance in the regulatory treatment of content delivered via traditional broadcasting, as compared to digital platforms, is distortionary and should be addressed.[42] |
| Trust is key for economic growth | This will increase trust in the digital economy and spur competition between businesses on the basis of privacy.[43] |
| Sharing data ensures fairness / innovation | The ACCC considers that opening up the data, or the routes to data, held by the major digital platforms may reduce the barriers to competition in existing markets and assist competitive innovation in future markets.[44] |

3 *Searching for Themes*

Braun and Clarke define 'themes' as 'patterns of shared meaning underpinned or united by a core concept'.[45] In Phase 3, the codes (and extracts) were reviewed for similarities and overlaps. The codes were then grouped into clusters based on initial themes derived from these similarities and overlaps. There were initially eight themes, including a 'miscellaneous' theme.

4 *Reviewing Themes*

Phase 4 involved 'quality checking',[46] namely reviewing the themes against the coded data and the overall interaction between themes. Some codes were moved between themes, some initial themes were transformed into sub-themes and other themes were abandoned. Ultimately, the initial themes were broken into the three themes discussed in this article: online harm reduction; fairness; and democratic security.

41 Braun and Clarke, 'One Size Fits All?' (n 38) 340.

42 *Digital Platforms Inquiry* (n 7) 2.

43 Ibid 3.

44 Ibid 11.

45 Virginia Braun and Victoria Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) 11(4) *Qualitative Research in Sport, Exercise and Health* 589, 593 (emphasis omitted).

46 Braun and Clarke, 'Thematic Analysis' (n 37) 65.

5 *Defining and Naming Themes*

Braun and Clarke suggest the 'separation between Phase 5 and Phase 6 is often slightly blurry'.[47] In a similar manner, there was much overlap in this study between Phases 5 and 6. Broadly, this Phase involved the construction of the analytical narrative involving each theme. In particular, the relevant extracts to quote and discuss were selected and structured in a coherent manner. Additionally, the final names of the themes were selected in this Phase.

6 *Producing the Article*

As noted above, Phase 6 was integrated with Phase 5 and involved the drafting of this article.

## IV Identifying Themes

In light of the method above, Part IV outlines the results of the thematic analysis and discusses the findings. However, before delving into this analysis, it is important to note that scholars have previously commented on Australia's approach to internet regulation. This commentary often suggests the Australian regulatory regime and Australian attitudes towards internet regulation are going through a process of development and have not yet crystallised. For example, Angela Daly and Julian Thomas in 2017 considered that Australia had not yet established robust policy positions in a number of areas,[48] and Samson Esayas and Dan Svantesson in 2018 noted a 'hardening attitude' amongst Australian policymakers and jurists towards internet intermediaries.[49] While it is acknowledged that many of the specific legislative devices — that will constitute the regulatory regime — are still being formed, where this article's analysis differs is that it is contended that the Australian approach has settled around three normative commitments. These norms are described in this article as: 'pragmatic harm reduction'; 'fairness'; and 'democratic security'.

### A *Pragmatic Harm Reduction*

It is a classic trope of Australian legal and political culture that policy and legal decision-making is inherently pragmatic and driven by the facts and circumstances of the moment. This image was portrayed by many early scholars[50] and continues

47 Ibid 67.

48 Angela Daly and Julian Thomas, 'Australian Internet Policy' (2017) 6(1) *Internet Policy Review* 1, 8.

49 Samson Esayas and Dan Svantesson, 'Digital Platforms under Fire: What Australia Can Learn from Recent Developments in Europe' (2018) 43(4) *Alternative Law Journal* 275, 276.

50 See, eg: Viscount James Bryce, *Modern Democracy* (Macmillan, 1921) vol 2; William Keith Hancock, *Australia* (Ernest Benn, 1930).

in contested form today.[51] Bede Harris, for example, posits that Australian legal and constitutional debates 'take … place in a normative vacuum without prior reference to fundamental rights theories'[52] and that '[t]he focus in Australian politics remains relentlessly on bread and butter issues'.[53] Scholars have suggested that this pragmatism is derived from a utilitarian streak that has run through Australian legal and political thought since before federation.[54] For example, Paul Kildea notes that utilitarianism is partially evidenced in Australia through 'a concentration on practical considerations and an aversion to abstract political concepts'.[55]

In this article, it is argued that this pragmatism underlies Australia's approach to online harm reduction. That is, throughout the documentation, parliamentarians and policymakers continuously draw attention to the need to protect the Australian people from the various harms of the internet. However, there is little evidence of an overriding moral framework underpinning this approach to harm reduction in the documentation, with the two exceptions of fairness and democratic security. Rather, harm reduction is a fluid concept pragmatically crafted to the specific concerns of the moment. In other words, legal and political actors will develop policy and legal responses to the threats of the internet as they emerge and are not attached to any specific moral viewpoint.

This view is summarised in the documentation surrounding the *OS Act* and the *Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Act 2018* (Cth) ('*EOS Act*'). This documentation outlined that harm reduction needed to be prioritised because the public expected it to be and not because of any firm ideological or moral viewpoint. For example, the Explanatory Memorandum to the Online Safety Bill 2021 (Cth) noted that '[t]he Australian public recognises the significant harms that can occur online and expect an appropriate regime to be enacted to prevent and minimise these harms'.[56] Similarly, the Revised Explanatory Memorandum to the Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018 (Cth) ('EOS Bill') stated that '[t]he Australian public recognise the abhorrence of this practice and the significant harm it causes victims, and expect an appropriate regime to be enacted to prevent and minimise harm to victims or potential

51 See, eg, Nicholas Barry, 'Australian Political Thought' in Peter J Chen et al (eds), *Australian Politics and Policy* (Sydney University Press, 2019) 32.

52 Bede Harris, 'Too Much Law and Not Enough Theory: A Critique of the Australian Constitution' (2016) 18(1) *Southern Cross University Law Review* 3, 16.

53 Ibid 29.

54 Hilary Charlesworth, 'The Australian Reluctance about Rights' (1993) 31(1) *Osgoode Hall Law Journal* 195, 197, 201; Hugh Collins, 'Political Ideology in Australia: The Distinctiveness of a Benthamite Society' (1985) 114(1) *Daedalus* 147, 148.

55 Paul Kildea, 'The Bill of Rights Debate in Australian Political Culture' (2003) 9(1) *Australian Journal of Human Rights* 65, 65.

56 Explanatory Memorandum, Online Safety Bill 2021 (Cth) 56 ('Explanatory Memorandum OS Bill').

victims'.[57] This point was made even more specific in the Senate's Environment and Communications Legislation Committee's Report on the *OS Act*:

> Ms Inman Grant reiterated that a goal of the proposed Online Content Scheme is to modernise and pivot the *Broadcasting Services Act 1992*, which was … based on a morality and obscenity code — to one that uses an online harms lens, which we think is a more accurate and a better way to not put values and morality into the decision-making process and really look at the tweeter, the post, and the damage and harm it's causing to the person on its face.[58]

In addition to these precise statements, pragmatism is also demonstrated in Australia's approach to enforcing harm reduction and defining what is an online harm. In relation to the former, the documentation shows neither a commitment to government control or individual self-regulation as is the case in other jurisdictions.[59] Instead, Australian political leaders and policymakers are content with both regulatory intervention and for private businesses to take the lead in preventing online harm. This approach was outlined across a number of the documents reviewed. Comments include: 'The internet is not an ungoverned space. Together, … [governments and businesses] must act to ensure that perpetrators and their accomplices cannot leverage online platforms for the purposes of spreading their violent and extreme fanatical propaganda'.[60] Furthermore, it was stated that '[t]he Government also recognises the strong partnerships that social media services and content hosts have established with the [eSafety] Commissioner and envisages that these relationships will continue to be pivotal in protecting Australians'.[61] Perhaps the following statement from the Online Safety Bill Reading Guide best encapsulates this position:

> Like other sectors, industry must take responsibility for making sure that the digital services they develop are safe for Australians to use. This responsibility applies from the moment that new platforms, applications, or services first enter the market. Online safety features are not something to be 'retrofitted' following the launch of a new product or following commercial success.

---

57 Revised Explanatory Memorandum, Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018 (Cth) 9 ('Explanatory Memorandum EOS Bill').

58 *Online Safety Report* (n 8) 17 [2.47].

59 Government control is commonly associated with the regulatory approach of the People's Republic of China: see Min Jiang, 'Authoritarian Informationalism: China's Approach to Internet Sovereignty' (2010) 30(2) *SAIS Review of International Affairs* 71. The individualistic method to internet regulation is generally associated with the approach of the United States in the 1990s and early 2000s: see Hannah Bloch-Wehba, 'Global Platform Governance: Private Power in the Shadow of the State' (2019) 72(1) *SMU Law Review* 27, 36–8; Bowers and Zittrain (n 18).

60 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 April 2019, 1849 (Christian Porter, Attorney-General).

61 Explanatory Memorandum EOS Bill (n 57) 3.

> Legislation should reflect the primary responsibility of industry, and allow the regulator to assess this effort and act where industry falls short.[62]

Regarding what constitutes online harm, Australian policymakers adopt a broad concept that encompasses a wide variety of online interactions. Some of the harms discussed across the documentation include terrorist or violent material,[63] unauthorised copyright use,[64] misinformation,[65] non-consensual sharing of intimate images[66] and cyber-abuse.[67] However, it became clear throughout this study that the concept does not have a clear limit and appears to evolve with changes in technology. For example, it was noted that

> [n]ew forms of online harms have emerged globally as services, businesses, education and social interactions have increasingly become digitised and connected. Today, online harms include cyber-bullying, abusive commentary or 'trolling', non-consensual sharing of intimate images (image-based abuse), child grooming, cyber-flashing, cyberstalking and technology facilitated abuse and the sharing of personal information without consent (doxing). …[68]

> Negative online experiences can cause psychological harm and exacerbate social exclusion for vulnerable individuals and groups and may contribute to adverse mental health outcomes for individuals. Without reform, Australians will continue to be exposed to negative online experiences on social media services, and on new and emerging platforms that they use every day.[69]

It appears that the concept of online harm here is simply equated with negative online experiences by Australians and that harm reduction is the prevention of these experiences.

A counterargument to the conclusion that online harm reduction in itself is the objective, and not some overriding moral or ideological framework, is that the various reforms and reports considered in this article were undertaken by a centre-right Liberal-National Government and may be deemed conservative in nature. However,

---

62 Department of Infrastructure, Transport, Regional Development and Communications, *Online Safety Bill* (Reading Guide, 23 December 2020) 1.

63 Explanatory Memorandum, Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019 (Cth) 9 [27] ('Explanatory Memorandum AVM Bill').

64 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 June 2018, 6223 (Paul Fletcher, Minister for Urban Infrastructure and Cities).

65 Australian Communications and Media Authority, *Misinformation and News Quality on Digital Platforms* (Position Paper, June 2020) 20.

66 Explanatory Memorandum EOS Bill (n 57) 8–9.

67 Department of Communications and the Arts, *Online Safety Reform Proposals: Adult Cyber Abuse Scheme* (Fact Sheet, December 2019) 1.

68 Explanatory Memorandum OS Bill (n 56) 13.

69 Ibid 16.

it is important to note that the various reforms received broad political support. For example, the EOS Bill,[70] the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019 (Cth) ('AVM Bill')[71] and the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) ('Bargaining Code Bill')[72] all passed the House of Representatives without parliamentary opposition. Furthermore, historical reforms underpinned by a commitment to the reduction of online harms were also proposed during the previous Labor Government (e.g., a national internet filter).[73] This cross-party support for harm reduction suggests it is not a polarising issue and instead intertwined within the wider legal and political culture.

### B *Fairness*

The second theme that became evident in the study is what is described as 'fairness'. Egalitarianism is arguably the normative system most commonly associated with Australian legal and political culture. Rodney Smith, for example, contends that Australians apply a notion of 'fairness' to many aspects of their lives,[74] whilst Elaine Thompson maintains that '[e]galitarianism has shaped our democratic institutions, our definition of democracy and our definition of ourselves'.[75] Other commentators have noted the complexity and highly conditional nature of Australian egalitarianism, especially in relation to Indigenous Australians and other Australians from non-white backgrounds.[76] Nonetheless, despite the highly conditional nature, the scholarship indicates that Australians expect political and legal decisions to be fair with an emphasis that is unique among liberal democracies.[77]

---

70 Commonwealth, *Votes and Proceedings*, House of Representatives, 16 August 2018, 1728–9.

71 Commonwealth, *Votes and Proceedings*, House of Representatives, 4 April 2019, 2186–7.

72 Commonwealth, *Votes and Proceedings*, House of Representatives, 17 February 2021, 1648.

73 See, eg, Alana Maurushat and Renée Watt, 'Australia's Internet Filtering Proposal in the International Context' (2009) 12(2) *Internet Law Bulletin* 18.

74 Rodney Smith, *Australian Political Culture* (Pearson Education Australia, 2001) 5.

75 Elaine Thompson, *Fair Enough: Egalitarianism in Australia* (University of New South Wales Press, 1994) 250.

76 See, eg: Alexander Reilly, Gabrielle Appleby and Rebecca Laforgia, 'To Watch, To Never Look Away: The Public's Responsibility for Australia's Offshore Processing of Asylum Seekers' (2014) 39(3) *Alternative Law Journal* 162; Rodney Smith (n 74) 100; Kildea (n 55) 100–7.

77 Robert Hogg, 'Myths and Markets: Australian Culture and Economic Doctrine' (2002) 26(72) *Journal of Australian Studies* 235, 235; Bruce Kapferer and Barry Morris, 'The Australian Society of the State: Egalitarian Ideologies and New Directions in Exclusionary Practice' (2003) 47(3) *Social Analysis* 80, 88–9. Examples include industrial relations and asylum seeker policy: Nick Dyrenfurth, 'John Howard's Hegemony of Values: The Politics of "Mateship" in the Howard Decade' (2007) 42(2) *Australian*

This emphasis on fairness was evident in the study and, in turn, in Australia's approach to internet regulation. Fairness in this context does not necessarily mean equality — as suggested it is more conditional than that concept. Rather it appears to mean that governments should intervene when one side of a transaction has a perceived informational or regulatory advantage. This applies to both business-to-business ('B2B') and business-to-consumer ('B2C') transactions.

In B2B situations, it is expected that domestic businesses should have access to the same, or at least similar, information and regulatory environments as foreign enterprises. Any favourable treatment to foreign enterprises is commonly viewed as unfair or imbalanced. For example, the *Digital Platforms Inquiry* and the Bargaining Code were both strongly underpinned by a normative position that addressing informational and regulatory differences between domestic and foreign enterprises (especially Google and Facebook) would achieve fairness. It was noted by ACCC Chair Rod Sims that '[o]ur concern here is that this regulatory imbalance may provide an unfair advantage to digital platforms in attracting advertising expenditure by allowing them to operate within a very different journalistic context to traditional media outlets'.[78] Sims later stated in a separate speech that 'it is important that the Government addresses the bargaining imbalance that exists between digital platforms and media companies, which represents a classic market failure'.[79]

This view of fairness in B2B markets is not held solely by the ACCC but was also encapsulated in the succeeding parliamentary discussions of the *Digital Platforms Inquiry* and the Bargaining Code. For example, Treasurer Josh Frydenberg outlined in the second reading speech to the Bargaining Code Bill:

> Rather, we are seeking to create a level playing field where market power is not misused and there is appropriate compensation for the production of original news content. To that end, this bill will establish a new world-leading code of conduct for news media businesses and digital platforms. The code ensures that digital platforms share the benefit they obtain from using Australian sourced news content with the news media businesses who create that content.[80]

The Senate Economics Legislation Committee also stressed the importance of ensuring fairness in relationships between Australian media corporations and foreign platforms. For example, the Committee noted:

---

*Journal of Political Science* 211, 223; Danielle Every and Martha Augoustinos, 'Constructions of Australia in Pro- and Anti-Asylum Seeker Political Discourse' (2008) 14(3) *Nations and Nationalism* 562, 572–5.

78 Rod Sims, 'Examining the Impact of Digital Platforms on Competition in Media and Advertising Markets' (Speech, ThinkTV & ANAA Top 50 CMO Event, 27 February 2019).

79 Rod Sims, 'The Digital Platforms Inquiry' (Speech, Melbourne Press Club, 13 August 2019).

80 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2020, 11013 (Josh Frydenberg, Treasurer).

> Despite the concerns raised by various submitters and witnesses, the committee is confident that the bill will deliver on its intended outcomes. Its provisions will provide the basis for a more equitable relationship between the media and Google/Facebook and, through this, help safeguard public interest journalism in Australia.[81]

This understanding of fairness in B2B transactions does not involve solely comparing foreign and domestic internet businesses; there is also a belief that online businesses should not have advantages over 'physical world' organisations. Specifically, there is a view that it is not possible to achieve a fair distribution of outcomes if online businesses (especially platforms) have access to information that their physical world competitors (e.g., traditional media businesses) do not. It was noted in the Australian Government's response to the *Digital Platforms Inquiry* that, '[t]he Government's role is not to protect domestic businesses from digital competition, but rather to ensure the proper functioning of markets and a fair approach to regulation that ensures the rules of the physical world apply equally to the digital world'.[82] More succinctly, Treasurer Frydenberg said, 'the laws of the digital world should reflect as far as possible the laws of the physical world'.[83] It is important to note that this concern about ensuring equal treatment between digital and physical world businesses is at its most prevalent where the digital entities are seen to have some form of economic or financial advantage over their physical world competitors. For example, this concern was raised repeatedly in documentation arising from the Bargaining Code.[84]

Fairness is also an underlying normative frame of B2C transactions — intertwined with harm reduction. It is considered unfair and unjust that businesses should have substantial knowledge advantages over consumers and that the regulatory regime should actively seek to prevent this relationship. In this regard, the ACCC noted that '[t]he significant bargaining imbalance between consumers and digital platforms means that digital platforms may be able to engage in conduct that customers are uncomfortable with, or that falls short of societal norms, without losing customers'.[85] That is, the ACCC considers knowledge advantages held by

---

81 Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 [Provisions]* (Report, February 2021) 31 [2.49] ('*Treasury Laws Amendment Report*').

82 *Regulating in the Digital Age* (n 29) 6.

83 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2020, 11013 (Josh Frydenberg, Treasurer).

84 See, eg: Australian Competition and Consumer Commission, *Mandatory News Media Bargaining Code* (Concepts Paper, 19 May 2020) 7 ('ACCC Concepts Paper'); Australian Competition and Consumer Commission, *Draft News Media and Digital Platforms Mandatory Bargaining Code* (Q&A Paper, July 2020) 3; *Treasury Laws Amendment Report* (n 81) 29 [2.42].

85 Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, 10 December 2018) 238.

digital platforms over consumers as inconsistent with Australian social norms. To address this situation regulatory action is required, as illustrated by the following comment from the Attorney-General's Department on the purpose of a statutory tort of privacy:

> It also considered that it would increase the accountability of businesses for their data practices, give consumers greater control over their personal information, lessen the bargaining power imbalance between consumers and entities collecting their personal information and create a new deterrent discouraging entities from engaging in harmful data practices.[86]

However, it is interesting to note that where there is a conflict between ensuring fairness between a B2B transaction and a B2C transaction, it appears that there is a preference for resolving the B2B imbalance. This preference was demonstrated in the early stages of drafting the Bargaining Code. In particular, the ACCC Concepts Paper for the Bargaining Code stated:

> As noted in the DPI Final Report, consumers would not expect a news media business to have access to their broader browsing history, search queries or navigational history as a result of simply visiting the news media business's website.
>
> However, as digital platforms obtain a benefit from the data they collect due to users' interactions with news content published or distributed on their services, it may be reasonable for digital platforms to share this data with relevant news media businesses.[87]

Whilst amendments were made to the final version of the Bargaining Code to reduce potential harms to consumers,[88] the fact that media bargaining rights were addressed prior to consumer privacy rights does suggest favouritism to the former. This point has also been noted by consumer rights advocates.[89]

### C *Democratic Security*

The third theme evident from the study is what is described in this article as 'democratic security' — a normative commitment to protect Australian democracy

---

86 Attorney-General's Department, *Privacy Act Review* (Issues Paper, 30 October 2020) 70 ('*Privacy Act Review*').

87 ACCC Concepts Paper (n 84) 16.

88 See, eg, *Competition and Consumer Act 2010* (Cth) s 52ZB.

89 See Digital Rights Watch, Submission No 47 to Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020* (18 January 2021), where it was noted that '[w]e are concerned that the first actionable outcome of the extensive ACCC inquiry does not focus on addressing the most pressing systematic data collection and exploitation models that digital platforms thrive on, rather, it seeks to make sure that news corporations further benefit from them': at 3.

and democratic institutions. It has been noted by scholars that 'democracy' in itself is not a 'value' but is rather a 'process' (i.e. a means of law-making).[90] However, it can also be understood as a normative lens (i.e. a way of viewing the world).[91] In the case of Australia, consistent with its historical commitment to parliamentary supremacy and utilitarianism, decisions made by democratic or majoritarian means are generally viewed as being inherently good.[92] Popular sovereignty and institutions connected to the democratic process are perceived as being positive forces that should be advanced and defended.[93]

In the context of this study, this normative lens was most clearly demonstrated by the role of the news media in Australian society. Journalism has always played an important role in Australia's democratic history.[94] This importance was again illustrated in light of the economic threat these businesses face from the internet and digital platforms. It was evident from the documentation that Australian parliamentarians and policymakers viewed the news media and 'professional' journalism as important components of the democratic process. The internet, and especially platform businesses, were not just a threat to the sustainability of journalism, but also a risk to the health of Australia's democracy.

This concern was expressed throughout the study and across numerous documents. One of the older papers to be reviewed — the Issues Papers of the Digital Platforms Inquiry — notes:

> Access to a plurality of high-quality news and journalistic content benefits Australian consumers by enabling them to make informed judgments on the issues of the time and to effectively participate in a democratic society. Yet the growth of digital platforms and their increasing share of advertising revenue has challenged the business models of traditional media companies, particularly those reliant on advertising revenues such as newspaper publishers and broadcasters. A key concern is that lower advertising revenues are impeding the

90 See Bede Harris, 'Human Dignity and the Australian Constitution: A Critique' (2020) 17(1) *Canberra Law Review* 2, 16.

91 See, eg, Amartya Sen, 'Democracy as a Universal Value' (1999) 10(3) *Journal of Democracy* 3.

92 For a discussion of the cultural role of parliamentary supremacy in Australia and an associated scepticism of judicial review, see: Rosalind Dixon and Gabrielle Appleby, 'Constitutional Implications in Australia: Explaining the Structure: Rights Dualism' in Rosalind Dixon and Adrienne Stone (eds), *The Invisible Constitution in Comparative Perspective* (Cambridge University Press, 2018) 343; Cheryl Saunders and Adrienne Stone, 'The High Court of Australia' in András Jakab, Arthur Dyevre and Giulio Itzcovich (eds), *Comparative Constitutional Reasoning* (Cambridge University Press, 2017) 36.

93 See, eg, Chief Justice James Allsop, 'Values in Public Law' (2017) 91(2) *Australian Law Journal* 118, 121–2.

94 See, eg, John M Williams, 'The Drafting of the Commonwealth Constitution' (2011) 6(1) *Public Policy* 9, 10.

> capacity of traditional media companies to fund the production and distribution of news and journalistic content.[95]

Similar sentiment was expressed in more recent parliamentary documentation. The Explanatory Memorandum to the Bargaining Code Bill states: 'Government intervention is necessary because of the public benefit provided by the production and dissemination of news, and the importance of a strong independent media in a well-functioning democracy.'[96] The Senate Economics Legislation Committee also emphasised this point:

> The committee agrees that public interest journalism is more than just an ordinary consumer product that has been undermined or 'disrupted' by new technology; rather public interest journalism is a cornerstone of democracy and its survival is imperative in a society increasingly vulnerable to misleading information that can so easily be spread on the internet.[97]

Whilst journalism was shown as an important component of democracy, it is interesting to note that human rights and traditional common law freedoms and entitlements were challenged, especially when they conflicted with other norms mentioned in the study. For example, harm reduction was commonly shown in the study as taking priority over freedom of speech and procedural fairness. In this regard, the Explanatory Memorandum to the AVM Bill stated: 'Indirectly limiting how private citizens may express their opinions is a proportionate and necessary consequence of pursuing the objective of this Bill',[98] and '[t]he reason for excluding procedural fairness in relation to the issuing of the notice is to enable the eSafety Commissioner to issue a notice as quickly as possible'.[99]

Privacy was one right where expanding protection was generally seen as a positive. In particular, restricting the commercialisation of personal information and data without consent or knowledge by consumers was regularly promoted throughout the documentation. As alluded to above, this is likely due to privacy being connected to harm reduction and ensuring fairness for consumers. The following comment from the *Digital Platforms Inquiry* was evident of this mindset:

> The volume of consumer data collected, as well as the opportunities to interrogate and leverage such data, are expected to increase. The ACCC considers that the *Privacy Act* needs reform in order to ensure consumers are adequately informed, empowered and protected, as to how their data is being used and

---

95 Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Issues Paper, 26 February 2018) 8–9.

96 Explanatory Memorandum, Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Cth) 7.

97 *Treasury Laws Amendment Report* (n 81) 29 [2.40].

98 Explanatory Memorandum AVM Bill (n 63) 9 [29].

99 Ibid 24 [78].

> collected. This will increase trust in the digital economy and spur competition between businesses on the basis of privacy.[100]

However, it was considered reasonable to restrict even this right in some circumstances where it conflicted with other norms and policy objectives. In particular, the sustainability of Australian journalism was arguably seen as more important to Australian democracy than restricting the commercialisation of personal information. The Attorney-General's Department noted:

> The purpose of exempting media organisations from the [Privacy] Act was to balance the public interest in providing adequate safeguards for the handling of personal information and the public interest in allowing a free flow of information to the public through the media. This exemption is considered critical to maintaining a democratic society.[101]

This suggests that whilst human rights, as well as common law freedoms and entitlements, are a part of the normative fabric of Australian legal and political culture, they are conditional and secondary to other norms.

## V Insights

Overall, this article has identified that the normative foundations of Australia's approach to internet regulation are based on three themes:

1. Pragmatic harm reduction: without prior reference to any fixed moral code, government should prevent Australians from encountering what is generally perceived as negative online experiences;
2. Fairness: governments should intervene where one side to a transaction (generally not Australians) has a perceived informational or regulatory advantage over the other; and
3. Democratic security: governments should intervene where there is perceived risk to the health of Australia's democracy and democratic institutions.

As indicated throughout the analysis, these three themes are consistent with the components of Australian legal and political culture that have been identified by scholars since Federation. Ideas associated with utilitarianism, egalitarianism and parliamentary supremacy still resonate strongly in political and policymaking circles. Alternative universal norms (such as human rights) are present but are secondary. This suggests that only an incomplete picture can be rendered when efforts to understand how to regulate the internet in Australia occur using the lens of policy debates in the United States and the European Union.

---

100 *Digital Platforms Inquiry* (n 7) 3.

101 *Privacy Act Review* (n 86) 35.

Privacy and data protection offer an excellent illustration. A number of scholars contend that Australia should look to the European Union and the *General Data Protection Regulation*[102] ('*GDPR*') as a basis for the regulation of privacy and data protection in Australia.[103] However, there are significant cultural differences between Australia and Europe when it comes to privacy, data protection and human rights.

European privacy and data protections are rooted in a belief that it is necessary to protect an individual's right to respect and personal dignity.[104] Luciano Floridi contends 'human dignity is the fundamental concept that provides the framework within which one needs to interpret … the *GDPR*'.[105] This is why some commentators contend the *GDPR* is expressly framed in terms of the rights of the individual.[106] This commitment to respect and personal dignity in European legal and political culture derives from the complex and unique historical context of Continental Europe. This includes events, such as: European integration in the 1990s and 2000s; the liberalisation of Central and Eastern Europe in the 1980s and 1990s; the reaction to the atrocities of 20th century fascism; political Catholicism; 18th and 19th century philosophical developments; and ancient aristocratic concepts of honour and respect.[107]

This complex collection of events in Europe are far removed from the historical circumstances of Australia. As chronologised by the likes of Hilary Charlesworth,[108]

---

102 *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)* [2016] OJ L 119/1 ('*GDPR*').

103 See, eg: Moira Paterson and Maeve McDonagh, 'Data Protection in an Era of Big Data: The Challenges Posed by Big Personal Data' (2018) 44(1) *Monash University Law Review* 1; Graham Greenleaf et al, 'Regulation of Digital Platforms as Part of Economy-Wide Reforms to Australia's Failed Privacy Laws' (Law Research Series Paper No 83, University of New South Wales, 2019).

104 James Q Whitman, 'The Two Western Cultures of Privacy: Dignity Versus Liberty' (2004) 113(6) *Yale Law Journal* 1151, 1161.

105 Luciano Floridi, 'On Human Dignity as a Foundation for the Right to Privacy' (2016) 29(4) *Philosophy and Technology* 307, 307. See also Orla Lynskey, *The Foundations of EU Data Protection Law* (Oxford University Press, 2015) 94–5.

106 Yvonne McDermott, 'Conceptualising the Right to Data Protection in an Era of Big Data' (2017) 4(1) *Big Data and Society* 1, 1–2. It is noted that the *GDPR* states, 'this Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data': at art 1(2).

107 Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Hart Publishing, 2015) 55–6; James Q Whitman, 'Enforcing Civility and Respect: Three Societies' (2000) 109(6) *Yale Law Journal* 1279, 1283–4. See also Samuel Moyn, 'The Secret History of Constitutional Dignity' (2014) 17(2) *Yale Human Rights and Development Journal* 39, which discusses the role of Irish constitutionalism in the emergence of dignity as a modern European political concept.

108 Hilary Charlesworth, *Writing in Rights: Australian and the Protection of Human Rights* (UNSW Press, 2002); Charlesworth, 'The Australian Reluctance about Rights' (n 54).

Paul Kildea[109] and Jon Piccini[110] for most of the late 19th and 20th centuries, efforts at expanding human rights and human rights discourse in Australia was often unsuccessful and lacked public support. This reality was evidenced by the dominant influence of English constitutionalism on the framers of the *Constitution*, including the resulting limited rights and freedoms present in the text, the failure of rights enhancing constitutional referendums in 1944 and 1988, and the unsuccessful attempts at introducing a Commonwealth Bill of Rights in the 1970s and 1980s. As Kildea notes, unlike the European experience, the relative political stability of 20th century Australia meant '[m]aking the positive case [for rights] was difficult in a society in which most Australians did not feel that their rights were under threat'.[111] In more modern times, despite the efforts of scholars and progressive lawyers in Australia, it is contended that human rights and human dignity still remain secondary to other objectives and concerns in Australian legal and political culture.[112] For example, as identified by George Williams and Daniel Reynolds, despite efforts at introducing parliamentary human rights scrutiny regimes and processes in Australia, such as the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), this has not prevented rights-infringing legislation. Rather, Williams and Reynolds argue, Australia has a 'culture of justification', where human rights can be used as a tool to justify policy decisions.[113] In a related study, Williams found various restrictions on rights and freedoms across Australia, despite the recent introduction of bills and charters of rights in some Australian jurisdictions. In fact, Williams identified '350 instances of current Commonwealth, state and territory

109 Kildea (n 55).

110 Jon Piccini, *Human Rights in Twentieth-Century Australia* (Cambridge University Press, 2019).

111 Kildea (n 55) 79.

112 Dylan Lino, 'Are Human Rights Enough (in Australia)?' (2019) 41(2) *Sydney Law Review* 281, 281–2. This conclusion is perhaps inconsistent with the High Court's decision in *Clubb v Edwards* (2019) 267 CLR 171 ('*Clubb*'), where Kiefel CJ, Bell and Keane JJ quoting Professor Aharon Barak said: 'Most central of all human rights is the right to dignity. It is the source from which all other human rights are derived. Dignity unites the other human rights into a whole': at 196 [50]. See also Jacqueline Gleeson, 'Human Dignity in the Time of John Hubert Plunkett' (Speech, JH Plunkett Lecture, Francis Forbes Society for Australian Legal History, 19 August 2021). This may suggest legal actors have greater appreciation for dignity as a concept compared to political actors. However, it is notable that prior to *Clubb* (n 112), the High Court had 'said almost nothing about the concept' and there has been limited discussion since: Scott Stephenson, 'Dignity and the Australian Constitution' (2020) 42(4) *Sydney Law Review* 369, 370.

113 George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 506. However, judicial review of legislation under the *Australian Constitution* is widely accepted: Matthew Stubbs, 'A Brief History of the Judicial Review of Legislation under the Australian Constitution' (2012) 40(2) *Federal Law Review* 227, 252.

laws infringing the identified democratic rights and freedoms'.[114] Others have noted post-legislative scrutiny of legislation from a rights perspective is largely ad hoc. In particular, Laura Grenfell completed a study of rights-scrutiny culture in state parliaments by noting that 'parliamentary rights-scrutiny alone may be structurally incapable of attracting meaningful rights deliberation'.[115]

The findings of the study in this article also support this position. Where privacy was discussed, it was often framed in terms of achieving a fair outcome or a reduction in harm.[116] There was limited evidence of privacy protection being approached as a means of guarding the rights and dignity of the individual. In fact, the word 'dignity' only appeared in two documents considered as a part of the study — neither in the context of individual privacy protections.[117] Furthermore, where strengthening Australians' individual privacy rights was discussed, it was arguably a lower priority than: (1) ensuring fairness between digital platforms and domestic Australian businesses; and (2) protecting what are considered critical elements of Australian democracy — namely professional journalism.

Given these differences in normative perceptions of privacy protection and human rights in Australia vis-à-vis Europe, it may be beneficial for scholars looking to encourage greater privacy protection in Australia to consider alternative regulatory regimes or at least components of the *GDPR* that are not entirely framed in terms of rights.[118] In light of the emphasis in the study on making industry responsible for reducing harm (pragmatic harm reduction) and eliminating informational advantages (fairness), elements of the *GDPR* or alternative regimes (e.g., information fiduciaries)[119] premised on industry accountability and the removal of informational asymmetries may be more consistent with Australian legal and political culture.

---

114 George Williams, 'The Legal Assault on Australian Democracy' (2016) 16(2) *Queensland University of Technology Law Review* 19, 24.

115 Laura Grenfell, 'Rights-Scrutiny Cultures and Anti-Bikie Bills in Australian State Parliaments: "A Bill of Rights for the Hell's Angels"' (2016) 44(3) *Federal Law Review* 363, 399. See also Sarah Moulds and Ying Hooi Khoo, 'The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia' (2020) 16(1) *Journal of International Studies* 1, 14.

116 See above nn 99–100 and accompanying text.

117 Commonwealth Government, *Online Safety Charter* (Statement, December 2019); Explanatory Memorandum AVM Bill (n 63).

118 See, eg, *GDPR* (n 102) arts 24, 25.

119 See, eg: Jack M Balkin, 'Information Fiduciaries and the First Amendment' (2016) 49(4) *UC Davis Law Review* 1183; Jack M Balkin, 'The Fiduciary Model of Privacy' (2020) 134(11) *Harvard Law Review Forum* 11; Jack M Balkin and Jonathan Zittrain, 'A Grand Bargain to Make Tech Companies Trustworthy', *The Atlantic* (online, 4 October 2016) <https://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346/>.

The same logic applies to those seeking to build internet businesses in Australia who suggest looking to the regulation of the internet in the United States.[120] These calls are likely due to the financial success commonly associated with aspects of the American regulatory regime. This includes laws such as § 230 of the *Communications Decency Act* ('CDA § 230'),[121] and the *Online Copyright Infringement Liability Limitation Act* ('DMCA § 512').[122] For example, the former law has been described as the law that 'created' the internet[123] and is considered by some to be responsible for 'a trillion or so dollars of value'.[124]

However, these laws arose in the United States due to its unique legal and political cultural circumstances. Specifically, it has been argued that these laws are underpinned by the United States' unique free speech and First Amendment culture.[125] In this regard, Anupam Chander and Uyên P Lê argue that a strong norm of American political and legal culture in the 1990s was to encourage free speech, including online. As internet intermediaries were identified as a means of allowing freedom of expression online, legal and political actors crafted a legal and regulatory environment uniquely favourable to these entities.[126]

In contrast to the United States, there is limited evidence of a culture of free speech veneration in Australia. In particular, there is no strong constitutional protection for free speech in Australia, with the regulation of speech predominantly the responsibility of Parliament. The implied freedom of political communication covers

120 See, eg, Atlassian, Submission No 48 to Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020* (18 January 2021). See also Interview with Scott Farquhar (Nilay Patel, The Verge, 16 March 2021).

121 47 USC § 230 (1996).

122 17 USC § 512 (1998).

123 See Jeff Kosseff, *The Twenty-Six Words that Created the Internet* (Cornell University Press, 2019).

124 David Post, 'A Bit of Internet History, or How Two Members of Congress Helped Create a Trillion or so Dollars of Value', *The Washington Post* (online, 27 August 2015) <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/27/a-bit-of-internet-history-or-how-two-members-of-congress-helped-create-a-trillion-or-so-dollars-of-value/>.

125 It has been suggested by scholars that free speech and the First Amendment are venerated or a 'fetish' in the United States: see Robert C Post, 'Community and the First Amendment' (1997) 29(2) *Arizona State Law Journal* 473, 474; Mary Anne Franks, *The Cult of the Constitution* (Stanford University Press, 2019) 16. For a wider discussion of American rights culture, see Jamal Greene, *How Rights Went Wrong: Why Our Obsession with Rights is Tearing America Apart* (Mariner Books, 2021); Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (Free Press, 1991).

126 Anupam Chander and Uyên P Lê, 'Free Speech' (2015) 100(2) *Iowa Law Review* 501, 505; Anupam Chander, 'How Law Made Silicon Valley' (2014) 63(3) *Emory Law Journal* 639, 642. Cf Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press, 2019) 89.

'only a narrow category of expression' and provides 'relatively weak protection for that expression'.[127] While freedom of expression is an important and necessary component of Australia's parliamentary democracy,[128] and is viewed favourably by many parliamentarians,[129] parliaments across Australia still commonly prioritise other concerns. In fact, Katharine Gelber has described that freedom of speech is an 'expendable' component of Australia's political culture[130] and there is a 'weak, narrow institutionalisation of freedom of speech' in Australia.[131] The findings in this study confirm Gelber's opinion. As noted in Part IV, free speech was commonly restricted to further alternative policy agendas. In particular, fetters on freedom of expression were justified in a number of circumstances to address the harms of the internet.[132]

Given the free speech and First Amendment culture commonly associated with the emergence of CDA § 230, DMCA § 512 and similar legal regimes is largely absent in Australia, it is unlikely Australia would adopt matching laws. Instead, those looking to the United States for policy solutions should consider how elements of the American regulatory regime could be recrafted to be more consistent with Australia's normative framework.

For example, CDA § 230 is a safe harbour, with limited exceptions. It provides that websites and online service providers are not liable for various causes of action for user content, including comments, pictures and videos.[133] Australia does have its own safe harbour provisions with some similarities to CDA § 230, namely the historical s 91, sch 5 of the *Broadcasting Services Act 1992* (Cth), or now s 235 of the *OS Act* ('BSA Immunity'). Broadly, under one limb of the BSA Immunity, the safe harbour seeks to provide immunity from any rule of common law, equity, or any state or territory law, where the law would have the effect of subjecting

127 Adrienne Stone, '"Insult and Emotion, Calumny and Invective": Twenty Years of Freedom of Political Communication' (2011) 30(1) *University of Queensland Law Journal* 79, 80.

128 As Gageler J outlined in *McCloy v New South Wales* (2015) 257 CLR 178, the implied freedom of political communication is 'necessary for the preservation of the integrity of the system of representative and responsible government established by Chs I and II of the *Constitution*, and for the preservation of the integrity of the method of constitutional alteration prescribed by s 128 of the *Constitution*': at 223 [101].

129 See, eg, Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Freedom of Speech in Australia* (Inquiry Report, 28 February 2017). 'The right to freedom of expression is of fundamental importance': at 47 [2.128].

130 Katharine Gelber, 'Freedom of Speech and Australian Political Culture' (2011) 30(1) *University of Queensland Law Journal* 135, 144.

131 Katharine Gelber, 'Norms, Institutions and Freedom of Speech in the US, the UK and Australia' (2021) 41(2) *Journal of Public Policy* 209, 220.

132 See above nn 98–9 and accompanying text.

133 Kosseff (n 123) 3–4.

the entity[134] to liability for content it hosts or carries. This is if the entity 'was not aware of the nature of the internet content'.[135] However, due to a number of limitations in its text, the BSA Immunity has limited effect.[136] In particular, the requirement of not being 'aware of the nature of the [internet] content' in effect limits protection if the entity has some form of knowledge of the existence of the content.[137]

Whilst it is highly improbable that the BSA Immunity would ever provide the broad immunity found in CDA § 230 — given the differences between Australian and American legal and political culture — the BSA Immunity could be strengthened in line with Australian norms to provide more protection. In particular, if the 'awareness' requirement could be removed, this would likely result in the BSA Immunity having broader effect. For example, it could prove an effective defence in defamation disputes where plaintiffs seek to hold search engines, social media companies and other platforms liable for user content.[138]

The 'awareness' requirement could be abandoned in favour of a requirement that the entity complies with the basic online safety expectations in pt 4 of the *OS Act* ('BOSE'). That is, a relevant entity would be immune from any rule of common law, equity or any state or territory law, where the law would have the effect of subjecting the entity to liability for content it hosts and the entity complied with the BOSE. The BOSE are 'community-led expectations and best practice for industry in preventing online harms'.[139] The BOSE will be outlined in a Ministerial Determination that will articulate the Government's 'core' and 'additional' expectations of complying entities to ensure protections for users.[140]

Such a reform would broadly be in accordance with the norms identified in this article. First, by encouraging entities to comply with the BOSE, it would tie immunity to ensuring harm reduction. Specifically, many of the Government's core

134 Protection is provided to 'internet content hosts' and 'internet service providers' under the *Broadcasting Services Act 1992* (Cth) and 'Australian hosting service providers' and 'internet service providers' under the *Online Safety Act 2021* (Cth).

135 *Broadcasting Services Act 1992* (Cth) sch 5, ss 91(1)(a), 91(1)(c), later amended by *Online Safety Act 2021* (Cth) ss 235(1)(a), 235(1)(c).

136 Kylie Pappalardo and Nicolas Suzor, 'The Liability of Australian Online Intermediaries' (2018) 40(4) *Sydney Law Review* 469, 493. See also Peter Leonard, 'Safe Harbors in Choppy Waters: Building a Sensible Approach to Liability of Internet Intermediaries in Australia' (2010) 3(2) *Journal of International Media and Entertainment Law* 221.

137 Pappalardo and Suzor (n 136) 493.

138 See, eg, *Trkulja v Google LLC* (2018) 263 CLR 149; *Fairfax Media Publications Pty Ltd v Voller* (2021) 392 ALR 540.

139 Explanatory Memorandum OS Bill (n 56) 30.

140 Department of Infrastructure, Transport, Regional Development and Communications, *Draft Online Safety (Basic Online Safety Expectations) Determination 2021* (Consultation Paper, July 2021) 1.

and additional expectations for complying entities are premised on ensuring Australians are able to utilise online services in a safe manner. For example, some of the anticipated core expectations of the Government, include to take reasonable steps to ensure that 'end-users are able to use the service in a safe manner' and 'technological or other measures are in effect to prevent access by children' to certain online material (eg material that is rated X18+ or R18+).[141] Second, the Government's expectations in the BOSE include various transparency and reporting requirements.[142] By connecting immunity to these requirements, the reform could also tie immunity to ensuring fairness. As noted in Part IV of this article, situations in which businesses have an informational advantage over individuals can be perceived as unfair in Australia policymaking circles.[143]

## VI Conclusion

In conclusion, this article has sought to understand what norms and features of Australian legal and political culture underpin its approach to the regulation of the internet. It conducted a thematic analysis of 54 documents (2,363 pages) produced by Australian government bodies, committees and individuals since the commencement of the ACCC's Digital Platforms Inquiry in December 2017. Overall, this article has identified that the normative foundations of Australia's approach to internet regulation are based on three themes: (1) pragmatic harm reduction; (2) fairness; and (3) democratic security. Whilst there is some overlap between these themes and the wider global environment (where there is a desire to regulate the internet and, in particular, digital platforms), it is considered that they represent a uniquely Australian combination. Specifically, these themes build on traditional ideas identified by scholars as being a part of Australian legal and political culture, including utilitarianism, egalitarianism, and parliamentary supremacy. In light of these conclusions, it is hoped this article might encourage scholars to consider the norms it identifies when discussing policy responses to the complexities of the internet in the Australian context. In particular, those looking to craft policies favourable to internet business development and innovation may want to consider how policies could be developed or modified to be consistent with Australian norms.

141 Online Safety (Basic Online Safety Expectations) Determination 2022 (Cth) ss 6(1), 12(1).

142 Ibid ss 13–20.

143 See above nn 85–6 and accompanying text.

## VII Annexure

| The documents reviewed as a part of this study were the following: |
|---|
| 1. Attorney-General's Department, *Privacy Act Review* (Issues Paper, 30 October 2020) |
| 2. Attorney-General's Department, *Privacy Act Review* (Terms of Reference, October 2020) |
| 3. Attorney-General's Department, *Sharing of Abhorrent Violent Material Act* (Fact Sheet, 16 July 2019) |
| 4. Australian Communications and Media Authority, *Misinformation and News Quality on Digital Platforms* (Position Paper, June 2020) |
| 5. Australian Competition and Consumer Commission, *App Developers' Experience with Apps* (Fact Sheet, 8 September 2020) |
| 6. Australian Competition and Consumer Commission, *Consumers' Experiences with Apps* (Fact Sheet, 8 September 2020) |
| 7. Australian Competition and Consumer Commission, *Digital Platform Services Inquiry* (Issues Paper, September 2020) |
| 8. Australian Competition and Consumer Commission, *Digital Platform Services Inquiry* (Interim Report, September 2020) |
| 9. Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Final Report, June 2019) |
| 10. Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Issues Paper, 26 February 2018) |
| 11. Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, 10 December 2018) |
| 12. Australian Competition and Consumer Commission, *Draft News Media and Digital Platforms Mandatory Bargaining Code* (Q&A Paper, July 2020) |
| 13. Australian Competition and Consumer Commission, *Mandatory News Media Bargaining Code* (Concepts Paper, 19 May 2020) |
| 14. Commonwealth, *Parliamentary Debates*, House of Representatives, 25 June 2018 |
| 15. Commonwealth, *Parliamentary Debates*, House of Representatives, 4 April 2019 |
| 16. Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2020 |
| 17. Commonwealth, *Parliamentary Debates*, House of Representatives, 24 February 2021 |
| 18. Commonwealth, *Parliamentary Debates*, Senate, 13 February 2018 |
| 19. Commonwealth Government, *Online Safety Charter* (Statement, December 2019) |
| 20. Commonwealth Government, *Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry* (Report, 12 December 2019) |
| 21. Department of Communications and the Arts, *Online Safety Legislative Reform* (Discussion Paper, December 2019) |
| 22. Department of Communications and the Arts, *Online Safety Reform Proposals: Adult Cyber Abuse Scheme* (Fact Sheet, December 2019) |
| 23. Department of Communications and the Arts, *Online Safety Reform Proposals: Ancillary Service Provider Notice Scheme* (Fact Sheet, December 2019) |
| 24. Department of Communications and the Arts, *Online Safety Reform Proposals: Basic Online Safety Expectations* (Fact Sheet, December 2019) |
| 25. Department of Communications and the Arts, *Online Safety Reform Proposals: Blocking Terrorist Material Online* (Fact Sheet, December 2019) |

| |
|---|
| 26. Department of Communications and the Arts, *Online Safety Reform Proposals: Cyberbullying Scheme* (Fact Sheet, December 2019) |
| 27. Department of Communications and the Arts, *Online Safety Reform Proposals: Harmful Online Content* (Fact Sheet, December 2019) |
| 28. Department of Communications and the Arts, *Online Safety Reform Proposals: Image-Based Abuse Scheme* (Fact Sheet, December 2019) |
| 29. Department of Communications and the Arts, *Online Safety Reform Proposals: Overview* (Fact Sheet, December 2019) |
| 30. Department of Infrastructure, Transport, Regional Development and Communications, *Australia's New Online Safety Act* (Fact Sheet, 23 December 2020) |
| 31. Department of Infrastructure, Transport, Regional Development and Communications, *Online Safety Bill 2020* (Exposure Draft, 23 December 2020) |
| 32. Department of Infrastructure, Transport, Regional Development and Communications, *Online Safety Bill* (Reading Guide, 23 December 2020) |
| 33. Explanatory Memorandum, Copyright Amendment (Service Providers) Bill 2017 (Cth) |
| 34. Explanatory Memorandum, Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019 (Cth) |
| 35. Explanatory Memorandum, Online Safety Bill 2021 (Cth) |
| 36. Explanatory Memorandum, Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Cth) |
| 37. Falk, Angelene, 'Privacy Implications of the Digital Platforms Inquiry' (Speech, Law Council of Australia Media and Communications Seminar, 20 November 2019) |
| 38. Fletcher, Paul, 'Keeping Australians Safe Online' (Speech, National Press Club, 11 December 2019) |
| 39. Fletcher, Paul, 'The Harmonised Framework: Digital Platforms and the Media' (Speech, International Institute of Communications, 21 February 2020) |
| 40. Revised Explanatory Memorandum, Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018 (Cth) |
| 41. Rickard, Delia, 'The ACCC and the Net Economy' (Speech, The Business Media Summit, 27 February 2018) |
| 42. Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 [Provisions]* (Report, February 2021) |
| 43. Senate Environment and Communications Legislation Committee, Parliament of Australia, *Online Safety Bill 2021 [Provisions] and Online Safety (Transitional Provisions and Consequential Amendments) Bill 2021 [Provisions]* (Report, March 2021) |
| 44. Sims, Rod, 'Address to the Conference' (Speech, Competition Law Conference, 25 May 2019) |
| 45. Sims, Rod, 'Data (R)Evolution: Consumer Welfare and Growth in the Digital Economy' (Speech, Consumer Policy Research Centre Conference, 19 November 2019) |
| 46. Sims, Rod, 'Examining the Impact of Digital Platforms on Competition in Media and Advertising Markets' (Speech, ThinkTV & ANAA Top 50 CMO Event, 27 February 2019) |
| 47. Sims, Rod, 'Insights and Impacts of the ACCC Digital Platforms Inquiry' (Speech, International Institute of Communication Seminar, 11 February 2019) |
| 48. Sims, Rod, 'Regulating for Competition: Stepping up for Platforms & Stepping Back from Media?' (Speech, International Institute of Communication: Telecommunications & Media Forum, 3 July 2018) |

| |
|---|
| 49. Sims, Rod, 'The ACCC's Digital Platforms Inquiry and the Need for Competition, Consumer Protection and Regulatory Response' (Speech, Australia-Israel Chamber of Commerce, 6 August 2020) |
| 50. Sims, Rod, 'The Digital Platforms Inquiry' (Speech, Melbourne Press Club, 13 August 2019) |
| 51. Supplementary Explanatory Memorandum, Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018 (Cth) |
| 52. Supplementary Explanatory Memorandum, Online Safety Bill 2021 (Cth) |
| 53. Treasurer (Cth), *Competition and Consumer (Price Inquiry: Digital Platforms) Direction* (10 February 2020) |
| 54. Treasurer (Cth), *Inquiry into Digital Platforms* (4 December 2017) |