



Australian Government
Attorney-General's Department

13 February 2020

Inquiry into the risk posed to Australia's democracy by foreign interference through social media

**Attorney-General's Department submission to the
Select Committee on Foreign Interference through
Social Media**

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2 Scope of submission

The Attorney-General's Department (the department) appreciates the opportunity to provide a written submission to the Select Committee on Foreign Interference through Social Media. The terms of reference for the submission were given as follows:

On 5 December 2019, the Senate resolved to establish a Select Committee on Foreign Interference through Social Media to inquire into and report on the risk posed to Australia's democracy by foreign interference through social media, with particular reference to:

- a. use of social media for purposes that undermine Australia's democracy and values, including the spread of misinformation;
- b. responses to mitigate the risk posed to Australia's democracy and values, including by the Australian Government and social media platforms;
- c. international policy responses to cyber-enabled foreign interference and misinformation;
- d. the extent of compliance with Australian laws; and
- e. any related matters.

The resolution establishing the committee is available in the [Journals of the Senate No. 35](#) – Thursday 5 December 2019.

Our submission focuses on the social media and misinformation aspects of the Committee's terms of reference.

In particular, we discuss:

- The Government's social media privacy reforms announced on 24 March 2019;
- The Australian Competition and Consumer Commission's (ACCC) *Digital Platforms Inquiry* (DPI) report (Report) released on 26 July 2019;
- The Government's response to the ACCC's DPI released on 12 December 2019;
- The role of the Foreign Influence Transparency Scheme in making foreign influence transparent

3 Introduction

This submission is made by the Integrity and Security Division of the Attorney-General's Department.

3.1 The Privacy Act

The *Privacy Act 1988* (Privacy Act) regulates the handling, holding, access and correction of personal information. The Australian Government is committed to ensuring that the Privacy Act provides appropriate protections for Australians' online privacy, particularly as a result of the explosion, over the past decade, in major social media and online platforms that handle and trade in personal information. Digital technologies are an increasingly important part of our economic and social landscape, improving the lives of Australians in many ways and creating new opportunities for work and leisure. These opportunities create new challenges and risks that need to be managed.

The recent Facebook/Cambridge Analytica incident highlighted community concerns about data security and privacy risks and demonstrated how personal data can be used to target users for political reasons. The incident demonstrated that reforms to Australian privacy law are necessary to strengthen protections for personal information and give individuals greater control over their own personal information, in the context of social media and large online platforms.

In March 2019, the Government committed to increase penalties and enforcement measures under the Privacy Act, and require the Office of the Australian Information Commissioner to develop a binding privacy code for social media and online platforms. In addition, in July 2019 the ACCC's DPI Report was published. The Government's response to the Report was released on 12 December 2019 and outlines the Government's immediate actions and a future work program to address some of the concerns raised in the ACCC's Report.

3.2 The Foreign Influence Transparency Scheme

The *Foreign Influence Transparency Scheme Act 2018* created the Foreign Influence Transparency Scheme (the scheme), and came into effect on 10 December 2018. The scheme is a significant transparency measure and the first of its kind in Australia. The scheme is intended to ensure the nature and extent of influence by foreign governments and political organisations on Australian federal political or governmental processes is transparent and appropriately disclosed to the public and decision makers. It should be noted that foreign influence, where it is open and transparent, is a legitimate part of international relations and is distinct from foreign interference.

4 Social Media Privacy Reforms

In March 2019, the Government announced reforms to the Privacy Act to increase penalties and enforcement measures and introduce a new privacy code targeted at social media and online platforms to better protect Australians' privacy online. The reforms include:

- strengthening penalties and enforcement powers for all entities subject to the Privacy Act, including increasing penalties from the current maximum penalty of \$2.1 million for serious or repeated breaches to the greater of \$10 million, three times the value of any benefit obtained through the misuse of information or 10 per cent of a company's annual domestic turnover, to match maximum penalties under the Australian Consumer Law; and
- introducing a binding privacy code that would apply to social media and online platforms that trade in personal information, requiring them to:
 - be more transparent about data sharing;
 - meet best practice standards when seeking consent to collect, use or disclose personal information;
 - stop using or disclosing an individual's personal information upon request; and
 - follow strengthened rules about handling personal information of children and other vulnerable groups.

The Government will consult on these reforms in 2020 in order to give interested parties an opportunity to provide their input.

5 Australian Competition and Consumer Commission's Digital Platforms Inquiry

The ACCC's DPI Report was a world leading report covering issues as diverse as privacy, media regulation, and merger laws. The DPI considered digital platforms and the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets. Privacy issues were a key part of the ACCC's final recommendations due to the importance of personal data to the business models of digital platforms, and the kind of privacy issues seen in the Facebook/Cambridge Analytica incident.

The Report emphasised that we need to ensure our regulatory frameworks keep pace with the changes being driven by digital platforms, including social media platforms.

The Report found that a high proportion of Australians use digital platforms, in particular platforms that are operated by Google and Facebook. The Report estimates that 19.2 million Australians use Google Search, 17.3 million access Facebook, 17.6 million watch YouTube and 11.2 million access Instagram.

The ACCC found that 83 per cent of digital platform users were of the view that it was a misuse of their personal information when entities monitor and collect their personal information without express consent.

The Government undertook a 12 week public consultation process on the 23 recommendations made by the ACCC in its Report and released its response on 12 December 2019. The Government's response encourages and enables strong competition, consumer protections and strong regulators. The Government's priority areas for reform include:

- updating the privacy law to ensure it empowers consumers, protects their data and best serves the Australian economy;
- establishing a new branch within the ACCC to monitor digital platforms and digital markets;
- taking action to address the bargaining power concerns between media companies and digital platforms; and
- commencing a staged process to reform media regulation to become neutral across different media platforms.

As part of public consultation on the social media privacy reforms discussed above, the Government has committed to seeking stakeholder input on amending the definition of 'personal information' in the Privacy Act to capture technical data and other online identifiers; strengthening existing notice

and consent; and introducing a direct right of action for individuals to bring actions in court to seek compensation for privacy breaches under the Privacy Act.

In order to consider whether Australian privacy law is adequate in the digital age, commencing in 2020 the department will conduct a review of the Privacy Act to ensure it empowers consumers, protects their data and best serves the Australian economy.

6 Foreign Influence Transparency Scheme

6.1 General operation of the Foreign Influence Transparency Scheme

The Foreign Influence Transparency Scheme (the scheme) operates by requiring that persons (whether individuals or entities) undertaking certain activities on behalf of foreign principals register those activities. The register is available for public view at <https://transparency.ag.gov.au/>.

Under the scheme, a person is required to register if they undertake a registrable activity in Australia for the purpose of political or governmental influence on behalf of a foreign principal. A registrable activity can be:

- General political lobbying;
- Parliamentary lobbying;
- Communications activity; or
- Disbursement activity.

Foreign principals may be foreign governments, foreign political organisations, foreign government related entities, and foreign government related individuals. An activity is undertaken 'on behalf of' a foreign principal if it is undertaken under any arrangement with the foreign principal.

It is important to note that the scheme is concerned with foreign influence rather than foreign interference. All governments, including in Australia, try to influence deliberations on issues of importance to them. These activities, when conducted in an open and transparent manner, are a normal aspect of international relations and diplomacy and can contribute positively to public debate. In contrast, foreign interference refers to activities that are covert, coercive, deceptive or corrupting, and are contrary to Australia's sovereignty, values and national interests. Foreign interference is covered by offences in the Commonwealth Criminal Code and dealt with by ASIO and the AFP, and is not the focus of the scheme.

6.2 Application of the Foreign Influence Transparency Scheme to social media

Under the scheme, communications activities need to be registered if they are undertaken in Australia on behalf of a foreign principal for the purpose of political or governmental influence. This includes the production or publication of graphics, audio, video or written information posted to social media.

Communications activities must also contain a disclosure as to the identity of, and relationship with, the foreign principal. This is similar to the authorisation disclosure contained on political advertising and ensures that people consuming the information, including through social media, are aware of the source of the information and can assess it for potential bias as a result.

6.3 An example of practical application of the scheme to social media

Given the heightened importance of transparency over our democratic processes during a federal election, the scheme imposes additional obligations during voting periods. These obligations begin on the day that the writs are issued and end when the last polling stations close on voting day. During these periods, activities must be lodged with the department within 7 days rather than the usual 14. The department must then publish those activities to the public register within 48 hours, rather than the normal 4 weeks.

In a general election campaign, there are many ways in which information is communicated to voters which attempt to influence their views about which candidate to vote for. In the electoral context, communications activities are required to be disclosed where materials are being produced or distributed on behalf of a foreign principal with the intent of influencing voter views on a particular candidate or policy platform.

During the 2019 federal election, the department provided advice and guidance to the Electoral Integrity Assurance Taskforce, a whole of government taskforce set up to support the integrity of Australian electoral events, in relation to the way in which the scheme may apply to potential cases of foreign influence by way of disinformation and other influence campaigns on social media that appeared to target specific sectors of voters.

In these cases, officers from the Attorney-General's Department were asked to consider whether any registrable activities were being undertaken, and whether the posts on social media needed to be registered and contain the appropriate disclosures. In making a determination about whether registration obligations would apply, there were a number of factors the department needed to take into consideration – some of which were difficult to establish with a strong degree of certainty. In particular, the number of social media posts and different platforms used in the federal election to share information and opinions on candidates was significant and it was often not clear whether the posts were on behalf of a foreign actor.

Notwithstanding this, where material was identified that may not have complied with the *Foreign Influence Transparency Act 2018*, the department engaged with government counterparts and,

where appropriate, social media companies to work cooperatively to assess whether the obligations under scheme applied to the material.