

February 2023

**Submission to Treasury**  
**Digital Platforms:**  
**Government**  
**consultation on ACCC's**  
**regulatory reform**  
**recommendations**



|  |          |
|--|----------|
| <b>Introduction</b> .....                          | <b>3</b> |
| Who is auDA? .....                                 | 3        |
| auDA’s role.....                                   | 3        |
| auDA’s stakeholders.....                           | 3        |
| auDA’s advocacy principles .....                   | 3        |
| <b>Background</b> .....                            | <b>4</b> |
| <b>Submission</b> .....                            | <b>5</b> |
| Key considerations.....                            | 5        |
| Responses to selected consultation questions ..... | 7        |
| <b>Conclusion</b> .....                            | <b>8</b> |



# Introduction

## Who is auDA?

.au Domain Administration Ltd (“auDA”) is the administrator of the .au country code Top Level Domain (ccTLD). The .au ccTLD includes the following namespaces: .au, com.au, net.au, org.au, asn.au, id.au, conf.au, vic.au, nsw.au, qld.au, sa.au, tas.au, wa.au, nt.au, act.au, edu.au, gov.au, csiro.au, and oz.au.

## auDA’s role

As a critical part of the digital economy, auDA’s role is to ensure the .au ccTLD remains stable, reliable and secure.

auDA performs the following functions:

- develop and implement domain name policy;
- license 2LD registry operators;
- accredit and license registrars;
- implement consumer safeguards;
- facilitate .au Dispute Resolution Policy;
- represent .au at ICANN and other international fora;
- technical management of the .au zone file; and,
- manage and maintain a secure and stable Domain Name System.

## auDA’s stakeholders

auDA operates under an industry self-regulatory model, working closely with suppliers, business users, non-profit organisations, consumers and the Australian Government.

It seeks to serve the interests of the Internet community as a whole and takes a multi-stakeholder approach to Internet governance, where all interested parties can have their say.

auDA belongs to a global community of organisations and plays an active role in representing .au at international fora, such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the Asia Pacific Top Level Domain Association (APTLD).

## auDA’s advocacy principles

auDA’s local and international advocacy is undertaken in accordance with the following key principles:

1. **Purpose driven** – we are a for purpose organisation. Our purpose is to:



- administer a trusted .au domain for the benefit of all Australians
- champion an open, free, secure and global internet.

Our purpose serves our vision, which is to unlock positive social and economic value for Australians through an open, free secure and global internet.

- 2. Multi-stakeholder Approach** – We take a multi-stakeholder approach to our work, and we advocate for multi-stakeholder approaches to internet governance and policy matters. This involves us working closely with domain industry stakeholders, businesses, not-for-profit organisations, education and training providers, consumers, and Government entities to serve the interests of the Internet community as a whole. This approach is founded on strong relationships locally and globally.
- 3. Independence** – We are independent from government and from the corporate sector. This means we operate transparently and openly in the interests of all Australians.
- 4. Leadership** – We seek to lead Australia’s internet community to work better together on our shared work to actively advance an open, free, secure and global Internet and positively influence policy and outcomes related to internet governance. We do this through quality policy advice and analysis, through research and information, and by sharing this insight with those can benefit from it. Partnership is integral to our way of working – we often seek to work together with others who support our goal, to multiply our impact.
- 5. Encouraging Innovation** – We support an innovative digital economy, and through our work we foster innovation across the technology sector, recognising its benefit to growing our digital economy and, in turn, benefitting all Australians. Legislative burdens can have a negative effect on innovation in the technology sector, so we encourage the use of incentives and self-regulation where possible and a consultative approach to regulation where that is needed.

## Background

In response to Treasury’s consultation on “*Digital Platforms: Government consultation on ACCC’s regulatory reform recommendations*”, auDA is pleased to offer the below comment.



# Submission

The rapid growth of digital platforms and their use by individuals and uptake by businesses of all sizes across sectors call for regulatory clarity. Developing and enhancing digital platform regulation will have important implications both for the industry and for the wider society.

Many of the issues raised in Treasury's consultation paper are matters of interest for auDA as we are similarly committed to effective consumer protection, increasing competition in the sector, and reducing barriers to entry.

We believe that the overall regulatory approach taken by the Australian government needs to be viewed in the context of the internet as a global infrastructure and ecosystem, which digital platforms form part of. We advocate for Australian regulation that encourages an open, secure, and global approach to the internet. It is through this lens that we consider the ACCC's recommendations.

Without taking a stance on whether a new and digital platform-specific regulatory framework is required, we propose three key considerations we wish to see Treasury and in turn the ACCC pay attention to when addressing digital platform regulation and internet governance more broadly.

## Key considerations

### 1. Competition, fair trading and consumer protection

The Australian Government has an important role to play in examining evidence of competition concerns and consumer harm, evaluating existing rules and providing proportionate and targeted interventions to protect consumers and encourage fair competition. auDA supports these principles and operates the .au domain name space consistent with them: under auDA's [Terms of Endorsement](#) one of our key objectives is to "promote principles of competition, fair trading and consumer protection". Through such policies, auDA seeks to improve the utility of the .au domain for all Australians and facilitate equitable access to the market.

We emphasise that a regulatory framework for digital platforms is a complex area that will require careful navigation and comprehensive consideration of a multitude of stakeholders and various interplaying elements to ensure the framework is fit for purpose.

As a fundamental principle, we believe that the development of digital economy policies and regulations is best addressed through a multi-stakeholder approach.

### 2. Multi-stakeholder approach

We advocate for policy and regulatory processes that are open, transparent, multi-stakeholder, and evidence-based. A recent guide that underpins this approach is the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) [Guidelines for regulating digital](#)



[platforms: A multistakeholder approach to safeguarding freedom of expression and access to information](#). Overall, we recommend that relevant regulatory consumer and competition issues are addressed through:

- Multi-stakeholder and whole-of-government approaches involving strong collaboration and coordinated efforts between relevant regulators and policymakers, the private sector, technical community, academia, and the civil society.
- Efficient and effective domestic and international cooperation, both intergovernmental, multilateral and multi-stakeholder.

We encourage Treasury to adopt a more multistakeholder-driven approach, which could see engagement with key stakeholders and open dialogue with them as part of the next steps in the development of advice to government. ACCC should adopt similar approaches as it continues with the Digital Platforms inquiry. Multistakeholder approaches require more time for genuine and high-quality stakeholder engagement. Longer consultation periods could lead to better outcomes.

### 3. Internationally coherent and fit-for-purpose regulatory frameworks

Australian businesses and consumers are participants in the global digital economy through the internet, and more specifically through their widespread use of digital platforms. Thus, where possible, reasonable and practicable, regulatory frameworks that align with those in overseas jurisdictions can be preferable – so that compliance obligations for businesses, and experiences for consumers are harmonised.

In line with ‘best practice’ regulatory principles proposed by bodies such as the Organisation for Economic Cooperation and Development (OECD) and the UNESCO, we suggest that digital platform regulation should be:

- Consistent and globally coherent and harmonised where possible (see also our responses to **selected consultation questions** below);
- Fit-for-purpose and targeted at identified risks and issues;
- Technology-neutral and innovation-friendly;
- Relevant and necessary, i.e., address gaps in existing regulatory frameworks and not be duplicative or overlapping with existing regulations;
- Cost-effective, i.e., impose no or minimal additional compliance costs on businesses.

Below, we provide more specific responses to consultation questions 6, 25 and 26.



## Responses to selected consultation questions

### **6. What is the best way to ensure coherence between Government policies relating to digital platforms? Are any of the recommendations better addressed through other Government reforms or processes?**

To ensure coherence between government policies, we recommend that the ACCC adopts a whole-of-government approach whereby regulators and government entities responsible for relevant policy areas are included in the ongoing development of policy, legislative or regulatory reform proposals arising from this inquiry.

By way of example, we note that in 2021, the Parliamentary Joint Committee on Corporations and Financial Services undertook an inquiry into [Mobile Payment and Digital Wallet Financial Services](#). The inquiry addressed multiple policy issues that overlap with the ACCC's regulatory reform recommendations. Moreover, the Senate Economic References Committee's current [Inquiry into international digital platforms operated by Big Tech companies](#) identifies key issues that the ACCC addresses in its [Digital platform services inquiry 2020-2025](#).

We highlight that siloes and repetitive consultation processes should be avoided. A concerted effort should be taken by regulators to avoid duplication and fragmentation of regulation and to reduce uncertainty and unintended consequences for those subject to multiple regulatory frameworks. This equally applies to policy and regulatory proceedings that are intended to shape such frameworks.

We seek this approach, compared with today's more fragmented and complex one, so that a genuine cross-pollination of ideas can support better regulatory and policy outcomes through being better informed. We also support such an approach because it lowers the costs of effective participation in the development of such frameworks, allowing stakeholders to participate more effectively, and encouraging more diverse perspectives to be incorporated in the process.

### **25. Should Australia seek to largely align with an existing or proposed international regime? If so, which is the most appropriate?**

We encourage the ACCC to continue to leverage the experience of relevant regulators in other jurisdictions, having regard to market conditions in Australia where appropriate. It is crucial that the government critically assesses domestic regulatory requirements against the applicability and potential shortcomings of other country or multilateral regulatory frameworks.

We believe that it is appropriate for the Government to consider the approaches in the United Kingdom and the European Union's Digital Markets Act and Digital Services Act as well as the bills currently under consideration in the US Congress. We suggest the ACCC also considers Singapore's regulatory approach. We are aware of recent changes in the Singapore framework



– we have not assessed these but believe they may be of use for the ACCC or Treasury to consider. Effective from 1 February 2023, the Online Safety (Miscellaneous Amendments) Act comprises a new section that regulates online communication services specifically, social media platforms. Further, we note that the local regulator Infocomm Media Development Authority (IMDA) has drafted a [Code of Practice for Online Safety](#) for social media platforms.

When considering the adoption of regulatory principles, regardless of their provenance, we recommend the ACCC should have an underlying goal of ensuring Australia maintains a fit for purpose regulatory regime which supports the domestic economy and facilitates cross border international trade.

## **26. What are the benefits and downsides of Australia acting in advance of other countries or waiting and seeking to align with other jurisdictions?**

Considering the borderless nature of the internet and most digital platforms, we believe that seeking alignment with other jurisdictions' (proposed) regulatory frameworks, would benefit Australia's regulators, business community and the broader public in several ways:

- alignment across jurisdictions can help promote regulatory certainty and reduces the regulatory burden for digital platforms and their users;
- sharing knowledge and intelligence with regulators and policymakers across borders;
- encouraging enforcement action internationally;
- increasing business and consumer confidence and protection.

## **Conclusion**

We suggest that a multi-stakeholder approach becomes the 'default' approach when the Australian Government consults on cross-border internet and digital platform policy matters.

We recommend that a harmonised approach is taken across regulators to ensure consistency and avoid duplication or fragmentation of regulation.

We thank you for considering these matters. If you would like to discuss our submission, please contact auDA's Internet Governance and Policy Director, Jordan Carter on [jordan.carter@auda.org.au](mailto:jordan.carter@auda.org.au).



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