

Thursday, 4 April 2019

Livestream laws could have serious unintended consequences, chilling effect on business

Proposed amendments to criminal legislation to deal with the livestreaming of violent material on social media could have serious unintended consequences and should not be rushed through the parliament, the Law Council of Australia has warned.

The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill was announced as a reaction to the horrific Christchurch terrorist attacks, which were streamed live across social media.

Law Council President, Arthur Moses SC, said while steps should be taken to ensure social media is not weaponised to promote hatred and violence, proper consultation must occur to ensure fair and effective legislation. He also questioned why the proposed legislation was not being used to crack down on online hate speech that incites violence.

“Making social media companies and their executives criminally liable for the livestreaming of criminal content is a serious step which requires careful consideration. Furthermore, the proposed legislation should not absolve government taking steps to prevent crimes being livestreamed,” Mr Moses said.

“Law enforcement agencies must work with social media companies to develop intelligence sharing protocols to assist in detecting livestreaming that is broadcasting violent or criminal content.

“As we know, laws formulated as a knee-jerk reaction to a tragic event do not necessarily equate to good legislation and can have myriad unintended consequences. Whistleblowers may no longer be able to deploy social media to shine a light on atrocities committed around the world because social media companies will be required to remove certain content for fear of being charged with a crime. It could also lead to censorship of the media, which would be unacceptable.”

If passed, the Bill would create two new crimes under the Criminal Code:

- firstly, it would be a criminal offence for social media platforms not to remove abhorrent violent material expeditiously, which would be punishable by three years’ imprisonment or fines equating up to 10% of a platform’s annual turnover; and
- secondly, platforms anywhere in the world would have to notify the Australian Federal Police if aware their service was streaming abhorrent violent conduct occurring in Australia, with failure to do this punishable by fines of up to \$168,000 for an individual or \$840,000 for a corporation.

Mr Moses said imposing penalties on companies based on their annual turnover rather than by reference to a maximum set of penalties was problematic and could lead to difficulties with sentencing, with companies will be punished by reference to their size rather than the seriousness of their breach.

“This would be bad for certainty and bad for business. It could have a chilling effect on businesses investing in Australia. We also need to be sensible when working on these offences and not demand of social media companies what they cannot reasonably be expected to do,” Mr Moses said.

The Law Council will carefully consider the draft legislation, which should be referred to a parliamentary committee for review. It looks forward to working with Parliament to ensure the Bill is fit for purpose.

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