

Monday, 1 April 2019

## **Fining companies based on annual turnover sets dangerous precedent**

**Statement by Arthur Moses SC, President of the Law Council:**

Every rational person agrees that violent or criminal content must not be allowed to be broadcast by individuals using social media platforms. Social media should not be weaponised to promote hatred and violence.

However, I am concerned that this legislation is being thought up on the run without any proper consultation with the companies that will be bound by it and lawyers who will be asked to advise on it.

Often bad or ineffective policy is made when rushed through Parliament without proper consultation.

At this stage it is not clear whether social media companies are to have penalties imposed on them by reference to the annual turnover of the company registered in Australia or their global annual turnover. Any penalty by reference to their global annual turnover would be potentially unconstitutional.

Irrespective of this, imposing penalties on companies by reference to their annual turnover rather than by reference to a maximum set of penalties is problematic. It will lead to difficulties with sentencing and mean companies will be punished by reference to their size rather than the seriousness of their breach. That is bad for certainty and bad for business.

Such an approach to penalties, if used as a precedent for other areas of government regulation, could have a chilling effect on businesses investing in Australia or providing their services in this country.

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.

A machine cannot easily pick up the difference between a computer game and online live streaming. The algorithms may need time to be developed, assuming they can be.

Parliament making social media companies and their executives criminally liable for the live streaming of criminal content is a serious step which needs to be through carefully including what defences will be available.

This proposed legislation should not absolve government itself taking steps to prevent crimes being live streamed.

Law enforcement agencies must work with social media companies to develop protocols to share intelligence information to assist in detecting live streaming that is broadcasting violent or criminal content.

Bad and ineffective legislation is enacted when it is a knee jerk emotional reaction to a tragic event. The job of our parliamentarians is to approach their task in a mature and considered manner so effective and valid laws are enacted.

Parliamentarians should not rush this through but rather use the time to consult so we get this right.

*The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.*

The Law Council will carefully consider the draft legislation when it is provided with a copy and will work with the Parliament to ensure the proposed legislation is able to be complied with, proportionate, fit for purpose, and appropriately calibrated.

---

## **Contacts**

### **Patrick Pantano**

P 02 6246 3715

E [Patrick.Pantano@lawcouncil.asn.au](mailto:Patrick.Pantano@lawcouncil.asn.au)

### **Anne-Louise Brown**

P 0406 987 050

E [Anne-Louise.Brown@lawcouncil.asn.au](mailto:Anne-Louise.Brown@lawcouncil.asn.au)

*The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.*