

are at risk of falling foul, considering “trade or commerce” with section 18 of the ACL is defined broadly to include any business or professional activity whether or not carried on for profit, and regardless of size.

Accordingly, the time is now to consider the accuracy and transparency of data collection practices and procedures. Privacy policies and collection notices must explain to consumers what personal data is being collected, why it is being collected and how it will be used, or Australian businesses may risk a hefty fine and legal proceedings.

Gone are the days where the maximum civil penalty under the *Privacy Act* for privacy breach was capped at \$2.1 million. Now, with the ACCC having the power under the ACL to enforce privacy obligations, the maximum penalty for mishandling consumer data has increased by almost 500% to being the greater of:

- \$10 million;
- three times the value of the benefit received; or
- 10% of annual turnover in the preceding 12 months, if the benefit obtained from the offence cannot be determined.

Moreover, the Australian government has announced its intention to revise the penalty provisions of the *Privacy Act* so that the maximum civil penalties for data breaches align with the ACL. Accordingly, soon Australian businesses could be facing hefty fines for data breaches from all angles.

## CAMLA Breakfast Seminar

**The Hon. Paul Fletcher MP: A Staged Approach to Media Reform: Where We Are and the Road Ahead**  
**Friday, 27 November 2020**

Report by **Tom Barkl (ACMA)**

CAMLA welcomed the Hon Paul Fletcher MP to speak at Bird & Bird, Sydney, to outline the Government’s staged approach to media reform and announce the release of a green paper for modernising television regulation in Australia.

Mr Fletcher noted that Australians still largely rely upon free-to-air television to access quality news and to experience and enjoy Australian stories. However, weakening regulatory frameworks, financial impacts of the COVID-19 pandemic, and the arrival of new on-demand video streaming services, have put a significant strain on our local media and production sectors. This presents the Government with a unique public policy issue and an opportunity to reform Australia’s content landscape.

The Government is proposing to introduce spending obligations on both subscription and advertising-funded on-demand video streaming providers. These providers (who exceed a certain revenue threshold) would be required to spend a certain proportion of locally-earned revenue to commission new shows, co-productions, content acquisitions or through contribution to a new trust for local programming. The Government is seeking input on what the percentage level of revenue should be in this new structure.

The Media Reform Green Paper also seeks views on a number of other proposed measures, including:

- offering commercial broadcasters the choice to operate under a new kind of commercial television broadcasting licence, with a reduced regulatory burden provided they agree to move at a future point to using less radiofrequency spectrum;
- promoting the public interest by using proceeds from freed-up spectrum to invest in Australian news and screen content; and
- formalising the role of national broadcasters as key providers of Australian content.

CAMLA thanks Mr Fletcher for his insights into the Government’s proposals. We will be watching the developments with great interest.

Further comment on this reform package can be found within this edition of the *Communications Law Bulletin*.

