

**TREASURY CONSULTATION AND NON-PUBLICATION OF SUBMISSIONS
AFTER ALMOST 9 MONTHS**

NEW DIGITAL COMPETITION REGIME PROPOSAL 24 DECEMBER 2024

WHERE ARE THE SUBMISSIONS REQUESTED BY 14 FEBRUARY 2025?

Background

The ACCC undertook a large-scale digital platform services inquiry since 2020 and issued 10 reports with many recommendations (<https://www.accc.gov.au/inquiries-and-consultations/finalised-inquiries/digital-platform-services-inquiry-2020-25>). A major recommendation in the Fifth Interim Report (2022) and the Tenth Final Report (2025) is that targeted upfront (or ex ante) competition obligations be implemented through mandatory service-specific codes. These codes would complement existing competition laws under the Competition and Consumer Act. They would apply to digital platforms that meet designation criteria in respect of specific digital services they supply. The service-specific codes envisaged would be flexible, targeted, and clear and certain. The guiding objective would be to promote competition and innovation in the provision of digital platform services and related products and services. Breach of the service-specific codes would be subject to serious penalties and remedies under the Act.

The Government accepted that recommendation in principle in December 2023 ('Government's Response to the ACCC Digital Platform Services Inquiry' 8 December 2023, at: <https://treasury.gov.au/sites/default/files/2023-12/p2023-474029.pdf>). The Australian Treasury released 'A new digital competition regime proposal' for consultation in December 2024 (<https://treasury.gov.au/sites/default/files/2024-12/c2024-547447-pp.pdf>). That paper echoed the ACCC recommendation and the decision of the Government that a new regime for regulating competition in digital platforms be introduced. This is the vista:

'The proposed framework would introduce new, upfront requirements for certain 'designated' digital platforms with a critical position in the Australian economy. Amendments to the CCA would establish overarching principles, the ability to designate identified digital platform entities in respect of a specific service, broad obligations, enforcement and compliance mechanisms, and a framework for making subordinate legislation with detailed obligations applying at the service-level. Once a

digital platform entity has been designated in respect of a specific service, the ACCC would be responsible for enforcing the obligations.

The legislation would set out the scope of digital platform services which would be subject to designation.

It is proposed that the first services to be investigated for designation under the regime would be app marketplace services and ad tech services. Comment is also sought on whether social media services should be similarly prioritised.’ [at 6]

Submissions on the Treasury consultation paper were requested by 14 February 2025. Remarkably, almost 9 months later, the submissions have yet to be published (<https://treasury.gov.au/consultation/c2024-547447>).

FOI application to Treasury on 14 March 2025 fobbed off by Treasury on 14 April 2025

I made a FOI request to Treasury on 14 March 2025 (FOI ref: 3881) for access, under the Freedom of Information Act 1982, to the following:

All non-confidential submissions made to Treasury in response to the consultation, Digital platforms – a proposed new digital competition regime, 2 December 2024, with submissions requested by 14 February 2025.

I received a response by Treasury dated 14 April 2025. The response delayed access until 14 days after publication of the submissions on the Treasury website. The submissions have yet to be published at: <https://treasury.gov.au/consultation/c2024-547447>.

The Treasury response dated 14 April 2025 is Kafkaesque. It is set out below.

Brent Fisse

10 November 2025



14 April 2025
FOI ref: 3881

Mr Brent Fisse
By email: brentfisse@gmail.com

Dear Mr Fisse

FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 14 March 2025 for access, under the *Freedom of Information Act 1982 (FOI Act)*, to the following:

All non-confidential submissions made to Treasury in response to the consultation, Digital platforms – a proposed new digital competition regime, 2 December 2024, with submissions requested by 14 February 2025.

I am an authorised decision maker under section 23 of the FOI Act.

Decision

The Treasury has identified approximately 50 to 60 non-confidential submissions within scope of your request. I have decided to grant access to the documents in full in the form as published on the Treasury website. I have also decided to defer that access in the public interest under s 21(c) of the FOI Act to 14 days after the date of website publication. The reasons for my decision follow.

Material Considered

The material to which I have had regard in making this decision includes the scope of the request and content of the documents subject to your request, your previous FOI requests to the Treasury on the same kind of subject matter, the relevant provisions in the FOI Act and Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and advice from subject matter experts within the Treasury.

Reasons for decision

Section 21(1)(c) of the FOI Act relevantly provides an agency may defer the provision of access to the document concerned if the premature release of the document would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest.

treasury.gov.au

You have now made seven FOI requests to the Treasury, including the current request on broadly the same subject matter. That is, you have requested copies of non-confidential responses to Treasury public consultations on new policy proposals. Those requests are FOI 3416, 3591, 3592, 3666, 3708, 3833 and 3881.

Your first request FOI 3416 sought a specific submission from the Law Council of Australia. However, your other requests sought all non-confidential submissions provided by the public responding to a Treasury consultation. Each request has involved a significant volume of documents. For example, FOI 3591 involved 71 submissions which had to be redacted to remove exempt personal information before their release to you. In the current request, FOI 3881, Treasury holds 50 to 60 documents within scope of your request.

On four occasions, FOI 3592, 3666, 3708 and 3833, you withdrew your requests, but only after the non-confidential submissions were published on the Treasury website after Ministerial approval, and only after substantial work by the Treasury FOI team and business area to process your request to near completion.

Non-confidential submissions are published with the personal information of the individuals providing the submissions removed. However, processing your FOI requests requires double handling of these documents. This is because the redactions of personal information in the FOI request requires the inclusion of FOI Act exemption codes, which the published documents do not include.

Further, the established process is that non-confidential submissions are only published after obtaining the approval of the relevant Treasury portfolio Minister. Processing your FOI requests effectively undermines this process to the extent that processing your requests in advance of a Ministerial publishing decision removes the Minister's discretion whether or not to order the publication.

I consider there is a substantial public interest in deferring access to the requested documents in this request. In particular,

- there is a public interest in avoiding the unreasonable diversion of Treasury resources in processing an FOI request about documents intended for ultimate publication, and
- the public interest in permitting Ministerial consideration of an issue without undue interference through the FOI process.

Conclusion

For these reasons, I have decided to grant access to the requested documents in full in the form as published on the Treasury website. I have also decided to defer that access in the public interest under s 21(c) of the FOI Act to 14 days after the date of website publication.

Disclosure Log

The Treasurer publishes documents disclosed in response to FOI requests on the Treasury website on the same day that the decision is sent to an applicant. This is consistent with the arrangements established by section 11C of the FOI Act. In this case, I have decided that the released documents are appropriate for publication, but due to volume, that publication be by way of link to the published documents on the Treasury website.

Next steps

As indicated, Treasury will make a similar decision to this decision regarding any future FOI requests you submit on the same kind of subject matter. However, if you have an interest in public submissions on an issue, we suggest in future you send your query to FOI@treasury.gov.au. We will then ask the relevant Treasury business area to notify you once the submissions have been published on the Treasury website after obtaining Ministerial approval.

Rights of Review

A statement setting out your rights of review in this matter is attached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Maevsky', with a stylized, cursive script.

Alex Maevsky
A/g Assistant Secretary
Competition and Digital Platforms Branch

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to FOI@Treasury.gov.au.

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.