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## Submission

16 September 2022

By email: [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au)

**Re: Consultation Paper: A nationally consistent scheme for access to digital records upon death or loss of decision-making capacity**

The Australian Communications Consumer Action Network (ACCAN) thanks the NSW Department of Communities and Justice for the opportunity to comment on *A nationally consistent scheme for access to digital records upon death or loss of decision-making capacity consultation paper* (The consultation paper). ACCAN is Australia's peak communications consumer organisation representing consumers of communications products and services, including the internet and mobile telecommunications.

ACCAN is not an expert body on inheritance laws and we restrict our comments to general need for a clear, easy to use and accessible scheme to allow consumers to control what happens to their digital accounts when they pass away or lose decision-making capacity. ACCAN understands that the proposed scheme applies to records access and is not intended to address outstanding questions relating to assets and property in the digital space.

ACCAN is aware that digital legacy planning is a challenge for consumers. According to one 2017 survey of 1,000 Australians, 821 people reported they had digital assets but 585, or 71%, were uncertain of what would happen to those digital assets if they died.<sup>1</sup> Several years ago ACCAN's grants program funded qualitative research into digital legacies at the University of Melbourne. The research illustrated that despite people's increasing use of digital services such as "social media sites, cloud-based accounts, personal blogs and websites, email and messaging services, as well as the accumulation of online collections of photos, videos and music" there is a lack of clarity for consumers of how to preserve their digital records and assets as well as pass on account details.<sup>2</sup> As the NSW Law Reform

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<sup>1</sup> Steen, A., D'Alessandro, S., McGrath, D., Davis, N., Graves, C., Barbera, F., and Shi, H. 2017. *Estate Planning in Australia*. Charles Sturt University & The University of Adelaide.

<sup>2</sup> van der Nagel, E., Arnold, M., Nansen, B., Gibbs, M., Kohn, T., Bellamy, C., and Clark, N. 2017, *Death and the Internet: Consumer issues for planning and managing digital legacies*, 2nd edn, Australian Communications Consumer Action Network, Sydney. Available at: [https://accan.org.au/files/Grants/Death%20and%20the%20Internet\\_2017-web.pdf](https://accan.org.au/files/Grants/Death%20and%20the%20Internet_2017-web.pdf)

Commission noted in its report, people with a legitimate access to digital records currently face significant barriers to access.<sup>3</sup>

ACCAN strongly supports the introduction of a nationally consistent scheme to give consumers a clear and easy way to plan and manage access to their digital records upon death or loss of decision-making capacity. To make digital legacy planning as simple as possible for consumers, the scheme must avoid replacing ad hoc arrangements across digital platforms with ad hoc arrangements between Australian states.

To facilitate a national scheme, ACCAN recommends that the NSW Department of Communities and Justice consult with Standards Australia to understand their ongoing development of technical standards for digital legacy management. A national scheme should make it as easy as possible for consumers to designate what happens to their digital estates as well as for designated individuals to access the deceased accounts of their friends or family.

In closing, ACCAN commends the NSW Department of Communities and Justice for addressing this pressing issue. Please do not hesitate to contact us should you require any further information.

Yours sincerely,

Samuel Kininmonth

Policy Adviser

Australian Communication Consumers Action Network

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*The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.*

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<sup>3</sup> New South Wales Law Reform Commission 2019, *Report 147 Access to digital records upon death or incapacity*. Available at: <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report%20147.pdf>