

## **Submission:**

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Dear Law Reform Commission,

I understand submissions are open on your review into the laws concerning the above. This is my submission.

1. I respectfully believe that legislation should be introduced (or an appropriate Act amended) to control this.
2. The current contractual arrangements and quasi-contractual arrangements (eg policies) between a user and the various platform providers, which vary wildly, are unsatisfactory. Eg, Facebook versus LinkedIn versus twitter and the options of 'memorial pages', shutting down or some platforms which prevent amendment/deletion etc. This is not something that lends itself to the law of contracts.
3. The law should ideally be uniform (ie at Commonwealth level), by States referring power if the power is not available under one of the s51 heads of power.
4. For better or worse, this is an area which permeates every facet of everyday life and inherently personal and often confidential information and details are either put online or can be deduced from what is put online by someone savvy. This is increasing exponentially and this will undoubtedly continue.
5. Full control and access to these platforms is not (unlike real, personal and intellectual property) something which lends itself to being passed on to an executor/administrator. It is not 'property' in the sense that our succession law should recognise.
6. Although it's axiomatic that it's impossible to delete 'stuff' from these platforms, everything possible to 'delete' information, accounts, posts, blogs etc should be done upon death of the user. This should not be something over which an executor/administrator has control. Similarly, this is not something which should be amenable to gift by will. There are other ways a person can, inter vivos, give effect to an intention to allow 'stuff' online to remain there if that is their wish. Further, despite best efforts and regardless of what the law says, people will always be able to change or copy things from a deceased's online accounts: it is impossible to prevent this given the practical reality that the people closest to the deceased will know how to access these accounts and will do so before a platform provider can act, or even knows the user has died. Any 'balancing' exercise between competing interests on this issue will happen by default given the medium (internet). The important issue is to ensure that the deceased user's accounts etc are extinguished within a certain time after death and do not, for example, remain ad infinitum.
7. Although the practicalities of effecting this objective are difficult, it is important to make laws to further the above objective (ie shutdown, delete and remove a user's online presence when the user dies).
8. As to the loss of capacity of a user, I think it should be like anything else vis-a-vis a properly appointed enduring attorney. The attorney should be able to deal with these online matters (login, transact, post, retrieve passwords etc) within the powers of the instrument, like anything else within power that they can lawfully do for the principal. Once the principal dies, however, the position should be no different to any other person (shutdown and delete etc).

I would be pleased to participate further in this review or to clarify any of my submissions if they are unclear.

Thank you.

Kind regards,

Marcellus Dignam