# ATLASSIAN

# Atlassian's Submission to Treasury's Consultation Paper on ACCC's regulatory reform recommendations for digital platforms

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We appreciate this opportunity to provide feedback to Treasury on the potential regulatory framework to address competition and consumer issues in relation to digital platform services, as set out in the Consultation Paper of December 2022 (the **Consultation Paper**) and in response to the ACCC's Interim Report No. 5 of its Digital Platform Services Inquiry of November 2022 (the **Interim Report**).

At Atlassian, we build enterprise software products to help teams collaborate, including for software development, project management and content management. Although Atlassian is not a large digital platform as described in the Interim Report, as one of Australia's most successful home-grown technology companies — and one that provides products and services to customers around the world — we believe that we are in a unique position to comment and provide industry insight on the Consultation Paper.

We know the critical role of data and information in powering the operations of our customers, and the digital economy more broadly. This means that we understand the importance of regulatory frameworks that take account of, and are tailored for, our evolving global digital economy, and can anticipate what our digital future will mean for Australian organisations and individuals.

We believe that the questions posed in the Consultation Paper provides an ideal opportunity for Treasury to revisit and assess how competition and consumer issues can and should fit within an overarching digital regulatory framework, which is responsive to these issues in their broader global context.

## Our approach

In late 2020, Atlassian published eight [Principles for Sound Tech Policy](#),[1] which are attached to this submission. These Principles are intended to not only guide Atlassian's own engagement on important matters of public policy, but to set forth guiding principles for what we believe sound technology-related public policy should look like more broadly.

Atlassian was also proud to participate in the ANU Tech Policy Design Centre's development of its [Tech Policy Design Kit](#), in collaboration with the Tech Council of Australia (of which Atlassian is a founding member) and the Digital Technology Taskforce in the Department of Prime Minister and Cabinet.[2] The Tech Policy Design Kit is intended to establish a baseline for 'best practice' development of regulatory frameworks and policies for our digital economy.

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[1] These Principles are also available for download at https://www.atlassian.com/blog/technology/regulating-technology.

[2] See https://techpolicydesign.au/tech-policy-design-kit.

In line with these Principles and processes, we appreciate the detailed consideration of the proposed new regulatory tools in relation to digital platform services in the Interim Report, and Treasury's further consultation on this framework through this process. This submission considers these framework matters raised in the Consultation Paper through the lens of these principles and our perspective on and approach to technology-related policy.

In this context, we believe that relevant regulatory tools should be situated within an overarching, coordinated digital regulatory framework that is:

- governed by **core principles**, which set expectations for all stakeholders as to how proposed measures and tools under this framework will be formulated and implemented, in line with Atlassian's first principle [*Define the playing field*] and fifth principle [*Let the light in*];

- operationalised through one or more central '**clearinghouses**', which allows government to build expertise (as to how technology operates, the opportunities and challenges it creates and how best to respond) and connections with industry, in a manner that can be accessed by a range of government agencies and regulators with responsibility across various sectors and areas of law, in line with Atlassian's second principle [*Engage with the issue*] and fourth principle [*Consult early, consult openly*]; and

- supported by targeted and objective **regulatory measures and tools**, which respond clearly to identified issues in a manner that aligns to and has the benefit of the overarching principles and institutional expertise, in line with Atlassian's third principle [*Treat the ailment, don't kill the patient*] and sixth principle [*Address behaviour, don't punish success*].

In line with Atlassian's seventh principle [*Tech (and trust) is global*], this model should also be designed to take into account (including through the clearinghouses identified above) where and how the regulatory framework fits in the broader global context, and be mindful of emerging global standards and opportunities for interoperability.

In our view, this proposed model provides a helpful basis for assessing our existing digital regulatory frameworks and considering where and how to improve them.

## A model for assessment of current and potential regulatory frameworks

In our view, the central framework, principles and governance model set forth above can help to ground the consideration of the ACCC's recommendations and the questions identified in the Consultation Paper.

As the Interim Report and the Consultation Paper both note, the recommendations relate to concerns that may arise only in certain contexts (for example, with respect to specific services or business models) or across our digital economy, they may intersect closely with other regulatory or legal issues or societal harms, and they are likely to have global dimensions and impacts.

In determining whether new measures are required, and assessing the capacity of our existing regulatory frameworks to respond to new issues and problems, it is therefore critical to consider each of these factors, and ensure that:

- ***The problems and responsive frameworks are properly situated within the broader (domestic and international) framework***. The Interim Report and Consultation Paper identify, and seek to place the ACCC's recommendations within, the context of international developments in this area. However, it is also clear that many of the problems that could be addressed through a new framework are multi-dimensional and could implicate many aspects of digital regulation (for example, where competition law concerns may intersect with valid privacy or security concerns). This includes:

- domestic reform proposals and processes that seek to address similar concerns, including proposed reforms to the *Privacy Act 1988* (Cth) to respond to the use of data and personal information in today's digital economy; and

- international regulatory developments (including those set forth in Appendix A to the Consultation Paper), which often seek to implement similar pro-competitive and pro-consumer measures for digital platforms, many of which are already in the process of being implemented.

Each of these processes are already in progress, but are yet to yield concrete outcomes. As a result, a regulatory approach that seeks to blaze a trail ahead of these developments would also mean dismissing a valuable opportunity to watch and learn. We believe that there is real benefit to Australian policymakers and regulators from continuing to actively monitor these processes, including engaging with their further development and implementation through relevant international forums. These outcomes can then be used to inform and tailor Australia's broader digital regulatory framework, by incorporating insights and feedback from both equivalent international and intersecting domestic legal regimes.

- ***The context of the problem or harm to be addressed is well-understood***. As the Consultation Paper points out, the question of which entities will be subject to new measures is not a straightforward one. In large part, this is because there are multiple ways to understand "digital platforms" and indeed the broader technology sector. This sector is not always capable of one-to-one comparisons with other, traditional 'vertical' sectors (such as energy, telecommunications and financial services) for a variety of reasons, including that the technology sector:

  - in many cases operates as a horizontal rather than a vertical sector, in that the products and services that it provides underpin and enable the activities of participants in most other sectors of our economy; and

  - is not homogenous, and captures a wide variety of types of businesses that operate at different layers of the technology ecosystem, from providers of physical infrastructure like data centres to social media platforms, to platforms that help to reimagine 'real-world' products like transportation and accommodation, with associated significant differences in service delivery and business models.

This heightens the need for targeted, tailored approaches to address specific harms. However, conversely, it is common in today's digital economy to hear that 'every company is a tech company', such that relevant issues and harms may need to be addressed across the economy (for example, market participants in various industries across Australia are engaged in the development and deployment of artificial intelligence and machine learning in their businesses). In some cases, new regulatory frameworks that apply only to (some or all) digital platforms may lead to unintended inefficiencies, whereas a corresponding whole-of-economy approach is more appropriate.

It is therefore critical to be able to understand where and how the problem or harm under consideration arises, and its relationship to the relevant technology products or services and those who provide or implement them.

- ***The proposed measure is targeted and proportionate to the problem or harm***. It follows from the context outlined above that the specific measures required to address identified problems and harms will need to clearly respond to that problem in a manner that is appropriately tailored and proportionate, as noted in the Discussion Paper.

The ACCC's recommendations with respect to service-specific codes of practice could provide a way to meet these aims, if drafted and implemented carefully and having regard to the above factors. For example, it will be critical to have regard to the sectoral context and participants that should be subject to the code. A code that vaguely or

broadly defines which entities should be subject to the code, or that seeks to conflate compliance across multiple types of technology platforms and differing business models, is likely to introduce significant confusion and unintended consequences in practice. Similarly, codes that introduce discretionary powers or overly subjective enforcement mechanisms can add confusion and increase overall operational risk for technology platforms.

Ultimately, we consider that these factors support the introduction of additional governance and operational models that serve to support our current regulatory frameworks — namely, the proposed 'clearinghouse' governance model outlined above — while keeping a close eye on the outcomes of concurrent and overlapping domestic and international reforms, and whether they support the introduction of entirely new regulatory frameworks.

We believe that this governance model could add significant further weight to models like the existing Digital Platform Regulators Forum (which includes the ACCC, Australian Communications and Media Authority, Office of the Australian Information Commissioner, and Office of the eSafety Commissioner), by establishing a body that can act as an 'internal regulatory consultancy' to government agencies and regulators alike. This body could monitor for issues and harms, assess their impact, and understand how these issues apply to and translate across our economy and in alignment with emerging international standards — from the entirety of the digital economy down to more homogenous sub-categories of digital platforms.

Atlassian would be pleased to discuss these comments with Treasury, and looks forward to the consideration of these matters in the Government's response to the Interim Report.

Yours sincerely,

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# Atlassian Principles
## for **Sound Tech Policy**

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# Atlassian Principles for **Sound Tech Policy**

## Preamble

We at Atlassian are strong believers that the future of human endeavour and economic prosperity will increasingly flow from innovation and technology. And as 2020 has shown us, ever-greater digitisation is not only tomorrow's trend, but also today's urgent requirement.

But the pace of technology development means that all of us – individuals, private industry and government – must together develop policy frameworks that unleash the positive potential of technology for society while reducing any negative effects.

We know that developing a sound policy framework requires carefully considering the interests and rights of all vested stakeholders, as well as the potential impacts on them. This complex undertaking requires dedicated planning and process--as well as guardrails for the ultimate result. It is not surprising then that sometimes such policy efforts come up short of their intended aims.

This is why we think it is time for a reset on the conversation around tech regulation--one that fully encompasses the positive contributions of the tech sector to society, the legitimate regulatory requirements of government and protection of individual rights, as well as the need for a consistent and reliable environment for shared economic prosperity.

To contribute to this renewed conversation, Atlassian offers the following set of guiding principles to help government, industry, and the public converge on the essential qualities of sound regulation in the technology sector. If implemented, we believe that these guiding principles will result in targeted and proportionate policies, informed by a collaborative process, that ultimately unleash the positive potential of technology while fully addressing individual and societal interests – a true "win win" outcome for all of our communities.

Lastly, as these Principles make clear, we believe that collaboration is key to sound tech policy. As part of our drafting process, we engaged with numerous members of the tech sector, industry associations, and civic organizations who share our common vision. But to ensure that collaboration and improvement can continue even after publication, we are licensing these Principles under a **Creative Commons** license, so that others can adopt, modify and build upon these ideas as the dialogue continues.

# Atlassian Principles for **Sound Tech Policy**

## I. Define the playing field

Sound tech policy should have clear objectives. This means that everyone should be able to understand the specific problems that regulation seeks to solve, or the interests it seeks to support. More importantly, the regulatory solution should be clearly targeted at that identified problem. Unclear intent breeds distrust and concern.

## II. Engage with the issue, don't dumb it down

Sound tech policy should be developed with a clear understanding of the relevant technology. Lawmakers and regulators may not all be technical experts, but if they engage with these experts and other stakeholders to understand the relevant technology and business models, they will be better positioned to respond to them through regulatory means. This can assist in identifying which regulatory means can be used effectively, and which ones are impractical or overly burdensome.

## III. Treat the ailment, don't kill the patient

Sound tech policy should be proportionate, and should always seek to minimise unintended consequences. If regulatory responses are not properly considered and tested, they can overreach or lead to unintended and undesirable consequences. These consequences can be just as devastating to companies and their users as failing to act at all. Regulations should be surgical; government should not use a regulatory hammer where a scalpel is appropriate for its goals.

## IV. Consult early, consult openly

Sound tech policy should be developed through open, consultative processes. When all relevant stakeholders are engaged early in regulatory processes, potential risks and unintended consequences can be identified and addressed before decisions are made. Open engagement also fosters greater trust in regulatory processes and creates space for both sides to clearly state their objectives or concerns. Early and extensive consultation is an obvious way to try to mitigate against a lack of understanding of the relevant technology or the business model of companies, and the consumer use cases. It also helps governments to ensure that regulations are as effective as possible.

## V. Let the light in

Nothing is more uncertain than "black box" exercise of government discretion outside of the public eye. Sound tech policy should provide for transparency in government decision-making and set forth fair procedures that allow meaningful challenge of and detailed inquiry into those decisions.

## VI. Address behaviour, don't punish success

Sound tech policy should seek to mold and target behaviours across a sector or drive outcomes on a systemic basis. It should not target specific individuals or companies. An approach that singles out individual organisations does not take into account the diversity and dynamism of the tech sector. More importantly, such an approach is not a sound long term approach addressing future challenges. This does not stop laws from ultimately being enforced in relation to identified individuals or entities, but regulations should not be made out against them specifically in the first place.

## VII. Tech (and trust) is global

Sound tech policy should be coherent and consistent, mindful of global standards and able to enhance global interoperability. Local conditions must of course be considered, ensuring that any regulation forms part of a coherent local landscape. However, if competing regulatory frameworks are not also considered, there is a high risk that technology regulation will develop in a piecemeal manner that increases the burden on innovation, business, and consumers alike.

## VIII. Build the foundation for shared success

Sound tech policy should provide a consistent and reliable framework for business and investment. We fully appreciate and support governments' legitimate interest in meeting regulatory goals and protecting consumers and the public, and the responsibility that all businesses share to ensure that this is achieved. It is equally important that the legislative process and outcome should be measured, fair, and reliable, in a manner that provides business stakeholders with the confidence to grow and invest in jobs, infrastructure, and improved products and services for their customers.