



Mark Speakman
Attorney General

MEDIA RELEASE

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REFORM TO ALLOW DATA ACCESS AFTER DEATH OR INCAPACITY

A NSW-led national scheme to allow access to a person's digital records upon death or incapacity is one step closer following the Meeting of Attorneys-General in Melbourne yesterday.

NSW Attorney General Mark Speakman said Commonwealth, State and Territory Attorneys-General agreed to a targeted consultation process to determine how digital records such as social media accounts should be accessed if the account holder dies or becomes incapacitated.

"Most people go online to work, to socialise and for entertainment, but few of us consider what happens to our digital assets once we are gone or are no longer able to make decisions," Mr Speakman said.

"This is a complex area of law requiring great sensitivity to ensure any scheme strikes the right balance between access and privacy."

Targeted consultation will take place from August to October 2022.

The consultation follows the [NSW Law Reform Commission's report](#) which, after a reference from Mr Speakman, recommended a nationally consistent scheme regulating access to a person's records if they die or become incapacitated, to overcome existing barriers.

Social media accounts such as TikTok, Snapchat, Twitter, Facebook and Instagram, along with other digital assets such as eBook libraries and music collections, are likely to outlive their owners, but access to them can vary according to the platform.

These barriers can result in preventing a person's legal representative from carrying out their legal obligations when administering an estate or managing the affairs of a person who has lost capacity.

Findings from the consultation will help to inform whether, and if so what, uniform model legislation should be adopted across Australia.

Sue Finn | 0476 871 252