

Mandatory news media bargaining code

Collective submission from 88 regional, state and national news publishers

This submission represents a consensus view of the majority of Australia's small-medium independently-owned news publishers towards the Mandatory Code to address bargaining power imbalances between Australian news media businesses and Google and Facebook, proposed by the Federal Government.

This group includes 84 members of Country Press Australia, who produce 139 regional and local community news publications across the country, and four leading national independent publishers, who between them produce eight state and national news publications (see list of publications below).

Overview

We believe the establishment of the Mandatory News Media Bargaining Code is likely to be one of the most important media policy decisions affecting Australian democracy for decades. It could literally determine the fate of the independent news publishing industry.

If this policy results in large, ongoing financial support to a tiny handful of the biggest, most powerful media companies -- and does not support independently-owned public interest journalism, represented by our group, on a scale that ensures its viability -- it could permanently and irrevocably increase the concentration of ownership of Australia's news ecosystem into the hands of two or three large companies, limiting competition and employment.

Diverse ownership of news publishing is crucial to our democracy. It gives hundreds of regions and communities access to local journalism, it provides diversity of news coverage and views in the cities, and it ensures that the country's journalism isn't left almost entirely in the hands of two or three large companies for whom news journalism is just one part.

In the words of the ACCC Concepts Paper: "... the implementation of bargaining frameworks should not unduly advantage larger news media businesses at the expense of smaller news media businesses, including regional and local news outlets."

Summary of recommendations

- Support for the sustainability of independent public interest news publishing should be the Government's highest priority in shaping the Code.
- A Value Exchange should be established between qualified news publishers and the platforms. Funds from the value exchange to be negotiated as a group of publishers. The total pool of funds would be divided into two groups:
 1. Large companies and companies who do not fit the criteria for the Independent Media tier.
 2. Independent media companies who comply with the independent media criteria.

The total pool of funds available from those negotiations would be provided by the digital platforms to a fund established and run by the Copyright Agency, or similar independent agency or auditor.

These funds would be allocated, proportionately, to the Independent Media tier based on a minimum total amount or a percentage of the total pool of funds available, whichever is greater.

A weighted approach (see below) would ensure the allocated pool of funds distributed to Independent Media recognises its special position in the news eco-system, its importance in servicing audiences not served by larger mass content publishers, its unique role in protecting diversity of news journalism ownership, its level of financial sustainability, its role in employment, and the high risk inherent in allocating funds based purely on size of audience or output.

The Copyright Agency or similar independent agency or auditor would provide these funds to publishers based on two elements:

1. 5% of funds collected by the Agency would be placed into a fund to be used to grant to organisations to use for specific projects relating to the production of news.
2. The remaining funds would be distributed to independent publishers. The distribution would be weighted based on:
 - The publisher's output of news/public interest journalism.
 - The editorial costs of producing that news/public interest journalism.
 - Other costs that support the production of that journalism.
- Recognition in the Bargaining Code of smaller and regional publishers as a distinct category requiring a minimum allocation of funds raised from digital platforms in order to support news media.

Recognition of the role of independent news publishers

This submission argues for a weighting to be given to smaller and regional publishers.

This allocation or reservation of funds would be disproportionate to the size of these operations and to their annual revenue relative to other, larger news media organisations. The justification for this is based on the nature of news media as a *public good*. It is this feature of news and journalistic content that underpinned attempts in the Digital Platforms Inquiry to address what amounts to a problem for the community as well as the businesses affected; there is no bargaining code proposed for other online retailers.

Within the class of providers of this public good, smaller and regional publishers are distinguished both for the nature of the product they supply and for the added difficulty in competing in a digital environment where digital platforms serve as news distributors and the beneficiaries of advertising revenue.

In some cases, the collapse of these suppliers would lead not only to a reduction in competition but to the absence of any professionally produced local journalism.

Below we set out five factors that characterise members of this group and provide substance for the claim to a special reservation from the funds generated via the Bargaining Code. Of the five factors, four are essential for membership of this group. The fifth, localism, is the defining characteristic of some members, but – providing other factors are present – is not

mandatory as some small, independent publishers producing original public affairs content contribute at a national or state level, rather than a local level. The factors are as follows:

1. Public interest journalism
2. Originality
3. Localism
4. Independent ownership
5. Organisational capacity

Some additional qualifying criteria are set out after the explanation of these factors.

Elements of the second tier

1. Public interest journalism/public affairs content

The Concept Paper raises the question of what content is to be recognised by this scheme. Others will address questions concerning the definition of news, public interest journalism etc. We support the proposal to limit the scheme to content that fulfils the “public good” function of journalism. For members of the group, this would mean the following:

News content is any type of information relevant to a geographic area in Australia (town, city, suburb, region, state, nation) where a clear investment in human capital is made to source, record, verify or provide detailed synthesis of that information or commentary in an original way in the interests of a public, common or shared social good. The producer of news must align with or adhere to a recognised professional code of conduct and standards. Individuals/institutions that prioritise self-interest, produce deliberately misleading or inaccurate information or promote personal views that may incite hatred or violence are not producers of news content under this definition.

2. Originality

Originality refers to content that is created by the news publication itself. While this can be a difficult quality to identify, it is possible to establish guidelines and to distinguish content that is not materially different from other content. An example is a news wire story with an additional couple of lines that do not substantially add to the story. This story may well be a valuable piece of content that makes an important contribution to a publication at any point in time, and newswires overall help to contribute to media diversity, but the article would not receive the special credit that would be given to an article on the same topic researched and written by a publication’s own journalist.

It would be desirable to recognise publications that generate a high proportion of content that is researched or exclusively purchased by them. This would not preclude similar recognition for a follow up story by another publication where its own journalist pursued a new line, but it would mean that reports posted on the same day as a competitor’s story breaks, which essentially inform readers of the subject covered by the competitor, are not recognised in the same way.

3. Localism

Localism would be valued under this scheme for its social function. Coverage of local courts, sport and councils in a regional centre, for example, is a function of local news media not undertaken by a metropolitan daily newspaper, website or a capital city TV news program.

The ongoing tracking and scrutiny has the cumulative effect of creating a more informed citizenry and allows significant events to be understood in context. Professional journalism is crucial.

While there are different levels of “local”, the recognition of localism under the Bargaining Code scheme would presumably work in a similar way to the obligations imposed on regional broadcasters under the broadcasting regulation, which identifies regions where the economic incentives for producing content are insufficient to ensure the market operates effectively without regulation.

4. Independent ownership

Ownership of media is now widely recognised as only one aspect of “media plurality” or “media pluralism”, or what is more commonly described in Australia as “media diversity”. There are many sources that explain the reasons behind recognition of media diversity, but for a succinct explanation of two important dimensions, it is worth noting the guiding statement by Ofcom [\[link\]](#), the UK equivalent of the ACMA, on why plurality matters¹:

Plurality matters because it makes an important contribution to a well-functioning democratic society. Media plurality is not a goal in itself but a means to an end. Plurality in media contributes to a well-functioning democratic society through:

- **informed citizens** who are able to access and consume a wide range of viewpoints across a variety of platforms and media owners; and
- **preventing too much influence over the political process** being exercised by any one media owner.

Unlike most other democratic countries, we have no rules restricting cross-media ownership. Unlike the UK, we have no “public interest consideration” under which a test of “sufficient plurality” can be supported by an independent complaints scheme – such as that operated by the Australian Press Council -- available free of charge to members of the community.

It would also be desirable for the operation of the standards scheme itself to be supported by the fund established through the Bargaining Code.

In these circumstances, it is difficult to see that the role of independent media would be more important in any democratic country than it is in Australia.

5. Organisational capacity

This criterion is related to independent ownership, but specifically recognises that smaller organisations will vary in their ability to take advantage of opportunities to expand or otherwise improve their businesses. These include small scale operations that make it impossible or impractical to cross-subsidise operations through activities such as event management or other related businesses. It also takes account of the high fixed costs of content production, and the disadvantages faced by smaller publishers in recouping these costs through the network effect of large scale distribution. And while some smaller operations will be able to take advantage of other opportunities offered by digital platforms, such as making use of customer data, others will not.

As distribution channels multiply, these problems will only compound for smaller players. The larger the organisation, the more likely it is that it can invest in tailoring its content for the vast array of online distribution channels. The investment required is substantial.

To ensure that the scheme is only available to bona fide small and regional publishers of professional news content, we propose two additional qualifying criteria.

¹ Ofcom, *Measurement Framework for Media Plurality – Statement*, 5 November 2015, p 6.
https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf

i. Established presence

Small and regional publishers must be able to demonstrate at least 12 months operation, providing the content described above as public interest/public affairs content. The established presence is necessary to exclude start-ups that are not genuine news providers. This does not mean there can be no new entrants; it means they will only qualify for support under this scheme after 12 months' operation. It would be possible to provide seed funding under other government or philanthropic schemes.

(ii) Membership of an external standards scheme

This criterion is designed to promote quality within the sector and, specifically, those who are supported by regulatory intervention in the form of the Bargaining Code. In order to avoid gaming of the scheme, to promote standards across the industry, and to build trust in journalism within the community, the standards schemes should be external, not internal. This means an in-house set of ethical standards is insufficient. The news organisations receiving funding under this scheme should subject themselves to a set of industry-recognised standards of practice supported by an independent complaints scheme – such as that operated by the Australian Press Council - available free of charge to members of the community.

Publishers and publications represented in this submission

STATE AND NATIONAL:

Private Media: Crikey, The Mandarin, SmartCompany

Solstice Media: InDaily, InQueensland

Schwartz Media: The Saturday Paper, The Monthly

Motion Publishing: The New Daily

REGIONAL:

The following members of Country Press Australia:

Alexandra Eildon Marysville Standard

Moorabool News

Bairnsdale Advertiser

East Gippsland News

Ballarat Miner Times

Beaufort Pyrenees Advocate

Beechworth Ovens & Murray Advertiser

Benalla Ensign

Berwick Star News

Brimbank & Northwest Star Weekly

Loddon Times

Camperdown Chronicle

Casterton News

Castlemaine Mail

Cobden Timboon Coast Times

Cobram Courier

Colac Herald

Corryong Courier

Cranbourne News

Dandenong Journal

Dimboola Banner

Buloke Times

West Gippsland Trader

Riverine Herald

West Wimmera Advocate

Euroa Gazette

Ferntree Gully Belgrave Star Mail

Foster Mirror

Geelong Indy

Hamilton Spectator

Mountain View Star News

Mclvor Times

Hopetoun Courier

Horsham Times

Weekly Advertiser

Gannawarra Times

The Journal

North Central Review

Kyabram Free Press
Midland Express
Lakes Post
Leongatha Star
Tarrangower Times
Mansfield Courier
Maribyrnong & Hobsons Bay Star Weekly
Maryborough Advertiser
Melton & Moorabool Star Weekly
Sunraysia Daily
Sunraysia Life
Mildura Weekly
Mortlake Dispatch
Latrobe Valley Express
Mount Evelyn Star Mail
Myrtleford Times /Alpine Observer
Nhill Free Press & Kaniva Times
Northern Star Weekly
Numurkah Leader
Ocean Grove Voice
Snowy River Mail
North West Express
Pakenham Berwick Gazette
Officer News
Phillip Island Advertiser
Portland Observer
Rainbow Jeparit Argus
Ranges Trader Star Mail
Robinvale Sentinel
Capaspe News
Sale Gippsland Times & Maffra Spectator
Sea Lake & Wycheproof Times
Seymour Telegraph
Benalla Ensign
Shepparton Adviser
Sunbury & Macedon Ranges Star Weekly
St Arnaud North Central News
Swan Hill Guardian
Terang Express
Surf Coast Times
Upper Yarra Star Mail
Wangaratta Chronicle
Warracknabeal Herald
Warragul & Drouin Gazette
South Gippsland Sentinel Times
Wyndham Star Weekly
Yarram Standard
Yarrowonga Chronicle
Yea Chronicle
Apsley Advocate
Barham Bridge
Monaro Post
Coonamble Times
Coonabraban Times
Free Press

Pastoral Times
Dubbo Photo News
Southern Riverina News
Gulgandra Weekly
Riverine Grazier
The Bugle
Canberra Weekly
Narrabri Courier
Newcastle Weekly
Tumut & Adelong Times
West Wyalong Advocate
Barcoo Independent
Moreton Border News
Clifton Courier
Fassifern Guardian
High Country Herald
Glasshouse Country & Melany News
Longreach Leader
Hinterland Times
Noosa Today
The Allora Advertiser
Oakey Champion
Coolum & North Shore Advertiser
On Our Selection News
Southern Free Times
Cooloola Bay Bulletin
Gympie Times
Mareeba Express
My Village News
Pittsworth Sentinel
Cooloola Coast News
Cassaway Coast Independent News
Kilcoy Sentinel
Plains Producer
Barossa Valley Leader
The Bunyip
Loxton News
Mt Barker Courier
Murray Pioneer
Border Times
Southern Argus
Two Wellls Echo
River News
Yorke Peninsula Times
Barrier Daily Truth
Border Watch
Penola Pennant
South Eastern Times
Huon Valley News
King Island Courier
Kingborough Chronicle
Circular Head Chronicle