



Australian
Press Council



**Submission to the
ACCC regarding a Mandatory News Media
Bargaining Code**

June 2020

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Introduction

The Australian Press Council welcomes the opportunity to provide this submission in response to the ACCC Concepts Paper on a mandatory news media bargaining code. In its previous submissions to the ACCC and the Government in relation to the digital platforms the Press Council has expressed concern about the impact on public interest journalism of the technological and other changes faced by the media industry in Australia and, in particular, the significant market power of digital platforms. Therefore the Press Council supports the move to develop a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms.

Not only is the loss of revenue affecting how much public interest journalism content is available, but it presents the risk of flow-on to the Press Council and its capacity to ensure appropriate standards of reporting and commentary. With the media also facing additional pressures in the current COVID 19 environment, there is a need for urgency in finalising and implementing the Code, and perhaps some additional interim government support.

Definition of news to be covered

The Press Council notes the Concepts Paper has proposed the first limb of a definition of news might be to cover material with the primary purpose of investigating, recording or providing commentary on issues of interest to Australians.

Members of the Press Council provide a variety of content in their publications, some of which is hard news (written in the inverted pyramid form) and some of which is features. Members of the Press Council support a very broad definition of news and support a definition of news that goes beyond reporting on matters in the public interest (noting the difference between matters of interest to Australians and those in the public interest).

The Press Council considers that the sub-genres of features listed below should be captured in the definition of news.

1. Colour story (commenting on the feel or atmosphere of an event eg story on opening of Olympics – the colour of the flags, the music etc)
2. News feature (which goes into more detail about the news of the day)
3. General feature (covers range of different features not really driven by the news agenda of the day)
4. Backgrounders or explainers (eg explaining early access to superannuation)
5. Investigative feature (in-depth)
6. Lifestyle feature (eg where to buy the best ice cream in Sydney)
7. Listicle (a feature used for example by BuzzFeed, eg five most popular cat videos, 28 ingenious ideas to improve your home)
8. An interview story (based on questions and answers in an interview)
9. The profile (akin to mini biography of a person)

10. Human interest stories (eg stories about people overcoming adversity – the story of the person is central to these)
11. Columns (eg opinion columns, expert columns)
12. Reviews (eg restaurant reviews, movies reviews, book reviews)
13. Travel stories ¹

The Concepts Paper also indicates the ACCC is considering the issue of whether the bargaining code's definition of news should require that content is produced by professional journalists or published by a professional news media business, suggesting this may be accomplished by extending the application of the code to material produced by journalists and news media businesses that:

- are members of a relevant standards-setting body (such as the Australian Press Council, the Independent Media Council or the Media, Entertainment and Arts Alliance), or
- adhere to a relevant media industry code (such as the Commercial Television Industry Code of Practice or the Commercial Radio Codes of Practice), or
- adhere to and publish equivalent internal journalistic standards (such as the Guardian Editorial Code or the Conversation editorial charter).

The Press Council's preferred option is to have and encourage all print and online media publications to be members of the Press Council. If the third category identified by the ACCC is necessary, the Press Council strongly recommends this be subject to the standards being no lower than those set by the Press Council and that there is an independent complaints-handling process with transparent publishing of decisions.

Digital platform services to be covered by the code

The Press Council supports Facebook and Google being covered by the Code. While Facebook and Google are the focus of current code development, the Press Council has previously urged the ACCC and government to not lose sight of the potential impact of other digital platforms on Australian media businesses. Consistent with this position the Press Council believes the Code should take a principle based rather than strict list-based approach to platforms covered by the code. In this way, a digital platform that uses news content created by others can be quickly brought under the Code if it meets certain criteria as laid out in the Code.

Given the impact digital platforms are having on the news media industry in Australia the provisions of the Code in regard to expanding the platforms covered should support the prompt consideration and speedy application of the Code to additional digital platforms where appropriate.

¹ See *Writing Feature Stories*, by Matthew Ricketson and Caroline Graham, Allen & Unwin, 2017, chapter 3, pp. 38-67.

Monetisation and sharing of revenue

The Press Council does not have a definitive position on the bargaining frameworks discussed in the paper as these are commercial matters for publisher members.

The Press Council is firmly of the view that the Code should treat all publishers equitably and not unduly advantage any group over another. In particular, the final model for distribution of remuneration should support media plurality.

As noted earlier, the activities of the digital platforms are having a significant financial impact on publishers that are members of the Press Council and this is already having flow on effects for the Press Council with the risk of serious loss of capacity in the future with the potential to reverse the improvements achieved following the Finkelstein Review in 2012. There is a danger therefore not only of reduced content but also of reduced standards, the quid pro quo of freedom of the press. As such, it is imperative that the Code adequately remunerate publishers such that they in turn can adequately fund the operation of the Press Council.

Algorithmic curation of news

The Press Council supports the suggestion that the digital platforms provide news media businesses with advance notice of significant changes to their algorithms.

Other Issues

The Press Council has concerns related to some other issues raised either directly or indirectly by the ACCC's Concepts Paper and which are discussed below.

1. The Press Council notes the discussion of 'scraping' in the Concepts Paper and has its own concerns around this activity. Scraping by digital platforms has created a new category of complaints to the Press Council and, in order to deal with such complaints, there could be a case for the Press Council to have coverage under the Code and be compensated by the digital platforms for the costs of dealing with such complaints (for example complaints about breach of principles in relation to accuracy and fairness and balance). The issue also arises as to why if digital platforms engage in scraping, they are not content producers themselves and need to ensure accuracy or why as re-publishers of information they are not primarily liable. Noting the need to complete and implement the first iteration of the Code as quickly as possible, the Press Council is not seeking to be initially covered by the operation of the Code but would like to engage further with the ACCC about this evolving area of publishing and the need and best means of providing the public with appropriate protections and avenues of complaint.
2. The Press Council has concerns about how consumers of news via digital platforms are aware of the role of the Press Council regarding publishing standards and complaints processes. There are also concerns around the circumstances where a publication agrees with the Press Council to take remedial action, but this remedial

action is not mirrored on the material appearing on digital platform sites. Also, an archive note attached to a Press Council adjudication published online may not appear on a digital platform site. The Concepts Paper notes there is a process to develop a voluntary code (or codes) of conduct for disinformation and news quality being overseen by the Australian Communications and Media Authority and the Council is discussing with the ACMA how these concerns might be accommodated in their work.

Conclusion

Thank you for the opportunity to make this submission.

Please let us know if we can be of further assistance.

A handwritten signature in black ink, appearing to read "John Pender". The signature is written in a cursive, flowing style.

John Pender

Executive Director