



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA



News Media and Digital Platforms Mandatory Bargaining Code



Exposure Draft

Joint response to the ACCC

From First Nations Media Australia and
Community Broadcasting Association of
Australia

August 2020

Introduction

Community Broadcasting Association of Australia (CBAA) is the peak body and national representative organisation for over 450 community radio stations across Australia. Community broadcasting is Australia's largest independent media sector, with almost six million people tuning in each week. It makes an important contribution to the diversity, inclusiveness and social cohesion that characterises Australia's open society, as stations serve diverse community needs – from different ethnic and language groups to arts and cultural communities, educational, youth and seniors, faith-based, First Nations, LGBTQIA+ or radio reading services for people with a disability.

First Nations Media Australia (FNMA) is the peak body for the First Nations media and communications industry. The First Nations radio sector comprises 28 urban and regional radio services, eight remote media organisations servicing 138 remote communities, collectively reaching nearly 50% of the Aboriginal and Torres Strait Islander population each week. In addition, the sector publishes print media including Koori Mail and the National Indigenous Times, online news sites such as IndigenousX, a regional satellite television service reaching 240,000 remote households (ICTV) and a free to air national TV service (NITV). These are the primary and often only source of information for much of the Aboriginal and Torres Strait Islander population.

The CBAA and FNMA each represent not-for-profit media organisations who contribute diverse reporting to the news landscape. As there is significant correlation in the interests of our respective memberships, the two organisations have again chosen to submit a joint response to the ACCC's Exposure Draft Explanation Materials for the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020, following on from our joint response to the ACCC's Concepts Paper in [June 2020](#). This submission highlights several matters in the Exposure Draft for your consideration. We appreciate the opportunity for ongoing input to the ACCC's consultation processes.

The CBAA and FNMA commends the ACCC for recognising and acting on the imbalance in negotiations between Google/Facebook as global corporations and Australian-based news services. We are pleased to see the Australian Government seeking to address this bargaining imbalance and through this work and other measures, support a strong and diverse media sector.

Summary of new law

1.14 The ACCC has chosen to exclude the ABC and SBS from bargaining about remuneration, the reason being that advertising revenue is not the public broadcasters' principle source of income. This indicates the ACCC is viewing the Code as a vehicle to supplement lost income rather than as an opportunity to secure fair remuneration for the redistribution of quality news content. The CBAA and FNMA urge the ACCC to take a principles-based approach regarding the use of news content in commercial settings, regardless of whether the original source relies in whole or in part on advertising revenue. This will also ensure that diverse media organisations with diverse business models – including the not-for-profit media sector – are all fairly encompassed and treated within the Code.

Given the Australian Government is currently providing grant support to many commercial newsrooms across the country through its Regional Innovation Fund and Public Interest News Gathering Program, tying inclusivity or exclusivity to the Code depending on principal funding source appears flawed.

From our perspective, the Code should also be attempting to mitigate the use of algorithms to circulate and reinforce fake news and to protect the public's capacity to readily choose between any number of legitimate news sources to formulate informed opinion. The Code should reinforce and support the functions of journalism in our democracy, rather than focusing exclusively on securing lost income.

1.17 The use of the word 'predominantly' in relation to news sources could be problematic. First Nations and community broadcasters contribute news content to the national dialogue from perspectives that are not adequately represented by commercial news outlets predominantly focused on 'core news content'.

Further, a radio station or a radio program such as a breakfast program that contains a five-minute news bulletin or local news update, may not meet this 'predominate' test, and we encourage the ACCC to consider wording that encompasses broadcast media and its structure.

[Which news businesses can participate in the code?](#)

FNMA and the CBAA broadly support the draft four-part test framework and offer comments on the specifics of some clauses only. We support the registration of news businesses with the ACMA.

The Revenue Test

FNMA and the CBAA believe the hard cut-off of \$150,000 in annual revenue outlined in 1.48 should be softened creating an additional threshold of \$50,000 in revenue for newly established news services.

The Content Test

The CBAA and FNMA support the content test provisions outlined in general but have concerns about the definition of core news content being produced exclusively by journalists. It is important that the Code does not define 'journalist' but focus rather on what the person is doing i.e. the function of journalism.

The CBAA and FNMA support a broad definition of journalism that focuses on the function of journalism and news creation. We recommend using a definition similar to that at 122.5 of the Criminal Code, whereby a person is covered if they have dealt with information in their capacity as a 'person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media', and have reasonably believed that doing so is in the public interest.

A broader definition, such as the above, outlining the function of journalism/news creation would encompass the important news-production undertaken by diverse personnel in the community broadcasting and First Nations media industries.

Our sectors' news creators must adhere to their station's editorial standards and the Community Radio or Community TV Codes of Practice as registered with the ACMA under the Broadcast services Act (1992), and the news they create would align with the definition in 1.50.

Many of our sectors' news makers are journalists, but may not hold a formal journalism qualification, or may be trainees or cadets undertaking formal journalistic training at University or similar. Equally, they may or may not be paid for their time or the content they produce and yet their work retains commercial, copyright and public interest value. The wording used in the draft is print-focused and should be broadened to reflect cross-platform news content more accurately.

Similarly, clause 1.53 and the associated legislation should be amended to 'written by journalists or broadcasters'. This would better capture the function of journalism, while ensuring it captures work done in line with proper editorial standards.

The Australian Audience Test

For clarity, we suggest amending the wording of 'serving Australian audiences' used in 1.54 and 1.55 to 'audiences within Australia' to include multicultural audiences who may or may not be Australian citizens.

Suggested amendment:

- "operate predominantly in Australia for the dominant purpose of serving audiences within Australia."

The Professional Standards Test

We seek the inclusion of all Codes of Practice developed in consultation with and registered by the ACMA into the Professional Standards Test.

This would include the Community Radio Broadcasting Codes of Practice and the Community Television Broadcasting Codes of Practice which are appropriate sets of standards, alongside our stations' own internal editorial standards. These should be referenced in the Bill and under clause 1.57 in the Explanatory Materials.

Minimum standards

The CBAA and FNMA support the minimum standards as drafted with the following adjustments:

- 1.65 Should be adjusted to match the wording in *The Content Test* for journalists or broadcasters; and
- 1.67 Content produced by academics and documentary makers can be news in some instances and should not be explicitly excluded under this clause.

User comments

1.88 This clause should contain a timeframe in which digital platforms must act on written requests from a registered news business. As drafted, the digital platform could keep written requests 'in progress' for any length of time.

[Bargaining](#)

1.104 The CBAA and FNMA support collective bargaining. Clause 1.104 and the associated legislation reads as though only registered news business corporations can enter a bargaining process with Google and/or Facebook.

We strongly recommend the draft wording be amended to include peak body representatives acting on behalf of news business members or another organisation nominated by a collective, and that this wording be reflected in all bargaining terms. As stated in our previous submission, the CBAA and FNMA would like the capacity to bargain collectively on behalf of the members they represent. This should be clarified in the Bill.

[Compulsory arbitration and renumeration](#)

FNMA and the CBAA agree that there is enough flexibility in the draft Bill to allow for negotiations that suit a broad range of news businesses. We also support the role of the ACCC in this process as drafted.

[Further discussions](#)

We believe that the focus of the Code should be on the fairer distribution of funds to support public interest journalism and it needs to ensure that smaller media organisations, including First Nations Media and community broadcasters are appropriately considered, and that funds don't just flow to the large media businesses.

CBAA and FNMA urge caution to minimise any unintended consequences arising from the implementation of the Code, including ensuring that any obligation to share algorithm changes are workable. It is important that changes that benefit the majority of news businesses are not held up by issues relevant to just a few.

We note that while the ABC and SBS are included and referred to as alternative business models, the community broadcasting and First Nations media sectors are not referenced in the Exposure Draft. While the community media sector may not be a significant commercial driver in the Australian news landscape, it is a significant contributor to the diversity of news content available to the Australian public. The contribution of news content relevant to vulnerable and culturally diverse communities has a significant role in influencing conversations within broader audiences and other media.

As not-for-profit media, our alternative business models rely on diverse income streams from sponsorship, supporters, philanthropy, fundraising, and Government investment, a model which is also impacted as audiences and sponsors shift to utilising digital platforms.

As such, FNMA and the CBAA are committed to working closely with the ACCC regarding not-for-profit news's position within mandatory bargaining codes. As peak bodies for the sectors, and active participants in research, policy and planning in broadcasting reform, we are well placed to provide further advice upon request.



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