



5 June 2020

Mandatory News Media Bargaining Code

Submission by Country Press Australia

Country Press Australia (CPA) welcomes the opportunity to provide a response to the ACCC's Mandatory News Media Bargaining Code: Concepts Paper (Concepts Paper) published on 19 May 2020.

The outcome of this Code is one of the most important media policy decisions affecting democracy in this country ever. The results will likely determine the future of the independent regional and local publishing industry in Australia.

CPA represents the interests of 139 independent regional and local news media mastheads around Australia. This submission is produced on behalf of our members. Members may have also provided responses individually.

Country Press Australia represents the rights of regional media outlets in negotiations with both industry and government. We're dedicated to delivering the best outcomes for our members in all dealings.

We champion our member newspapers in industry bodies including the Australian Press Council and Australian Publishers' Bureau. We're also educating the next generation of niche regional journalists through our dedicated Deakin course.

Country Press Australia has also partnered with Deakin University, which is carrying out a two-year research project into the impact on our communities and businesses by the digital platforms.

What we already know is that the impact has been significant. The power and scale of the digital platforms has resulted in the erosion of revenue from all of our members publications, resulting in some closures and an extremely difficult financial model. Newsrooms are now smaller and the coverage of quality journalism is more difficult as a result.

But our members, all independently owned and operated news media businesses are committed to their communities, connected to their readers and care about local outcomes.

Our member newspapers provide our communities with a voice, they provide balance and hold the powerful, including all tiers of government to account. They provide content that binds communities, including news about local sport, local groups and local associations.

Just last week we saw the collapse of a regional media empire. News Corporation abandoned their local communities by closing print publications across the country. The outcry by local communities has been enormous, but with the right approach by this code of conduct vitally important, local news can continue to serve communities and play it's vital democratic role.

CPA believes that the mandatory code must consider that balance of power, the economies of scale, the diversity of voice and most importantly the significance of hyper local news and what that means to communities.

CPA members publish newspapers in print and online. Our news is local, often servicing small communities, communities that are otherwise underserved. Our news is unique and mostly the only source of local news.

Our members' publications also provide many journalists the training and the opportunity to enter the industry. Journalists learn the importance of community, importance of local news, how to work with communities and the impact of bad decisions, poor reporting, or lack of balance. They hear directly from the community as they are the face of the newspaper. They learn about the special needs of the craft of journalism.

Without newspapers, local communities will be largely void of news. Broadcasters have closed local newsrooms and newspapers do and have provided the snippets of news that broadcasters use in any event.

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 news/public interest journalism on a scale that ensures its viability it will dramatically increase the concentration of ownership of Australia's news ecosystem into the hands of two or three large companies.

Diverse ownership of news publishing is crucial to our democracy. It means hundreds of regions and communities have access to local journalism, it means there is diversity of news coverage and views in the cities, it means that the country's journalism isn't left almost entirely in the hands of two or three large public companies.

In the words of the ACCC Concepts Paper: "Consideration should also be given to how any bargaining frameworks incorporated into the bargaining code would apply to the wide range of news media businesses in Australia. In particular, 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."

CPA recommends the ACCC consider an approach which recognises this vital need to ensure long term media diversity.

The ACCC should consider establishing two tiers of funding, with the majority of funding being provided to independent media businesses to ensure, diversity of voice, sustainable local media, ensuring the basic elements of democracy and holding the powerful to account are upheld and sustained into the future.

The Independent Media Tier would require a publisher to:

1. Primarily publish news/public interest journalism;
2. Primarily publish original news content;
3. Have independent ownership under 30 million dollars turnover;
4. Must have been operational for 12 months producing news/public interest journalism;
5. Must adhere and submit to the standards of the Australian Press Council;
6. Has paid employees, paying award wages and employs at a minimum one full time journalist under the Journalists Published Media Award 2010;
7. Primarily publish news related to the community in which that news is circulated.

Independent Media Tier (IMT) Criteria

CPA includes 7 criteria as requirements for inclusion in the Independent Media Tier because they represent the key elements of establishing that an organisation has the necessary structure to produce news (as defined) in the geographic locality of that organisation's community of service.

1. Primarily publish news/public interest journalism

Members of this Tier must be able to demonstrate their output is primarily "news" (as defined).

CPA's definition of news as being newly-received and noteworthy information about recent events or actions that a reader may find relevant or interesting (and as further defined), is a cornerstone to the ethos and operational intent of members of this Tier.

Indeed, the widely and extensively acknowledged public good benefits of "news" to the community as whole is at the core of the rationale for the Mandatory Bargaining Code.

As a result, this criteria is at the core of the IMT structure.

2. Primarily publish original news content

Any member of this Tier must be able to demonstrate their published content is primarily generated by the employees of that member. The importance of "originality" is detailed as part of *Algorithm curation of news* in this submission.

Rather than rehash, republish, replicate or rewrite, the production of original content requires not only a greater number of journalists, but better reporting, writing and investigative skills to perform the function of original content creation.

The support and recognition of publishers who provide this core function of journalism as a basic tenant of their organisation, is critical to this vital role in our democracy.

3. Have independent ownership under 30 million dollars turnover.

Ownership of media is now widely recognised as one aspect of “media plurality” 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, the UK equivalent of the ACMA:

Ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises. There should be a diverse range of independent news media voices across all platforms, a high overall consumption across demographics and consumers and active use of a range of different news sources.

Preventing any one media owner, or voice, having too much influence over public opinion and the political agenda. This can be achieved by ensuring that no organisation or news source has a share of consumption that is so high that there is a risk that people are exposed to a narrow set of viewpoints.

This statement from Ofcom neatly brings together different aspects of media content and media ownership. It’s important to see it in the context of the highly concentrated nature of commercial media in Australia, where three companies control most newspapers, two of the three metropolitan TV networks, the only subscription television network and some very popular radio stations as well as leading online news sites, catch-up TV services and streaming services. In many regional areas there has only been one significant source of local journalism; increasingly news sources that included a print platform are moving to digital only.

In their assessment of media ownership and concentration in Australia, Franco Papandrea and Rodney Tiffen (2016) make the following observation on levels of concentration since digitisation:

While the Internet has been instrumental in the growth of “new media” and the emergence of new global players such as Google, at the local level, its transformative effects on concentration have been limited.

They conclude:

While convergence brought about by the development and rapid growth of online information services may have eroded traditional industry boundaries, the resultant impact on industry concentration does not appear to be significant ... The most popular online news services are associated with traditional media, including daily newspapers and broadcasters. Among the “thousands of voices” accessible online, very few have the capacity to challenge the influence of traditional media on public opinion.

The dominance of Australia’s major media suppliers is seen in the Nielsen results for the top 20 news websites from 1 May 2018 until 30 April 2019: the top nine sites were all major players.

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 applied to media mergers.

We also restrict the number of commercial television licences and radio licences. And we have no tax incentive schemes to support either consumer subscriptions or investment in public interest journalism.

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.

This criterion also specifically recognises, by including a turnover threshold, 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.

In the United States an ongoing, multi-year study by the Tow Center for Digital Journalism at Columbia Journalism School into the relationship between large-scale technology companies and journalism found even significant regional metropolitan mastheads such as the *Los Angeles Times* and *Chicago Tribune* have struggled to post on multiple distribution platforms. In the UK Market overview research from the Department for Digital Culture Media and Sport similarly found local and regional press were the entities most in trouble due to their lack of size hampering their ability to generate profitable income online. This was further compounded by the low propensity (of consumers) to pay for news online.

In Australia last week, the intrinsic value of independent media ownership and the dangers of concentration, was highlighted to the Australian community by a decision by News Limited to close the vast majority of its printed newspaper mastheads in Queensland.

The foreshadowed substantial reductions in journalism jobs as a result of this announcement, is not only devastating these employees, but will significantly impact the provision of local news across many communities.

As a commercial enterprise, News Limited has the right to place their commercial interests first. This announcement does highlight the urgent action required in the sector, not just under this code, but on an all-encompassing media support strategy.

It is arguable but likely, that independently-owned media businesses would have assessed the individual commercial realities and reflected differently on the strategy, weighing up different obligations in their decision.

The adoption of the Independent Media Tier in this code, has the potential to help prevent this type of failure within this Tier, and even encourage some new entrants to replace the departing media entities.

It now appears, the concentration that was allowed to permeate the Queensland media market, is making it difficult for new entrants who wish to provide Queensland communities with diverse and independent news.

4. Must have been operational for 12 months producing news/public interest journalism

Members of the Independent Tier must be able to demonstrate a commitment and capability to perform the role of providing news (as defined) to their community. An organisation must be sustainable to justify the trust and support of their community, and build, rather than erode community trust in the media generally.

This criteria is not intended to reduce or curtail new entrants, but is included to prevent organisations who are unlikely to deliver the intended public benefit outcomes provided by members of this Tier deriving short term gain, with no intention or capacity to provide long term community benefit.

5. Must adhere and submit to the standards of the Australian Press Council

Members of the Independent Tier are required to adhere and submit standards in their provision of news designed to meet community expectations of a free, diverse and independent media sector. The definition of “news” included as part of this submission, expands on these requirements further.

To promote standards across members of this Tier, and to build trust in journalism within the community, the standards schemes should be external, not internal.

This means that only an in-house set of ethical standards is insufficient. Members of this Tier should subject themselves to a set of industry-recognised standards of practice supported by an independent complaints scheme.

Such a set of standards is currently administered and enforced on its members 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.

6. Has paid employees, paying award wages and employs at a minimum one full time paid under the Journalists' Published Media Award 2010.

Members of the Independent Tier are required to employ a minimum of one full time professional journalist.

The benefit of the service provided by Tier members to individual communities and democracy generally is underpinned by employing properly remunerated and well-trained, professional journalists who adhere to ethical and industry standards in the performance of their duties.

The swathe of untrained and unskilled content producers, providing material with no guiding principles that serve to advance democracy and proper, fair and unbiased community discourse are intentionally excluded in our Tier.

Moreover, the Code has been developed to support those content providers who produce news and to sustainably employ professional journalists who are resourced to provide journalism to meet both industry and community standards in their employment.

7. 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 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.

Value Exchange

Funds from the value exchange would 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. The Independent Media Companies who comply with the Independent Media Tier 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 to the Independent Media tier based on a minimum total amount or a percentage of the total pool of funds available, whichever is greater.

The Copyright Agency would provide these funds to publishers based on two elements:

1. 5% of funds collected by the Copyright 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 according to:
 - a. The extent to which a publisher publishes news content on a regular basis to a news online environment;

- b. The extent to which a publisher produces, prints and distributes a physical newspaper;
- c. The extent to which a publisher publishes news content on a regular basis to social media;
- d. The number of full-time equivalent journalists employed, including sub-editors, contributors and editors.

Should the bargaining Code have regard to the cost of producing news content

Concept Paper question 14

The CPA formula for allocation of remuneration from the value exchange commercial negotiation (above) includes the cost of producing news content.

CPA members invest heavily relative to the size of their communities, in investigating and reporting on issues. In many of the communities serviced, they are normally the only and in other cases, primary source of independent local news.

Both the ACCC and the Government have recognised the vulnerability of locally focused and produced journalism in regional and local communities.

CPA submits that inclusion of this cost is a vital measure of the value of news content within the Independent Tier.

Should the bargaining Code have regard to other factors

Concept Paper question 15

The CPA formula for the allocation of revenue from the value exchange commercial negotiation includes - “the extent to which a publisher produces, prints and distributes a physical newspaper” and “the extent a publisher publishes content to a website or social media”.

These measures both relate the dissemination of news across different platforms. Unless news is physically published, in whatever form, it remains an unread body of work that does not possess the vital characteristic of publication; that elevates it to “news” - it now being in the public domain.

Whether that be by print and distribution, digital dissemination, or a combination of both, these costs are imperative to convert words saved on a computer into news, allowing it to perform its definitional function.

Definition of News to be covered by the Code

CPA supports the Concept Paper’s proposition that the bargaining code incorporates a definition of news that focuses on the news content itself rather than the nature of the news media business producing the content.

CPA's proposed definition (courtesy Kristy Hess - Deakin University) for the purposes of the bargaining code is designed to acknowledge and support two areas of information content;

- a) the importance of original public interest journalism to Australian society in the interests of a healthy democracy; and
- b) the value of the broader array of information that is produced, synthesised, sourced or verified by news producers on behalf of an audience that enhances the social fabric and/or social cohesion of the geographies it serves.

Democracy demands that citizens have access to good quality information on which to deliberate, and access to reliable, credible mediated spaces that serve as arenas for public discussion. Journalism is not only understood to enable democracy, but is an essential part of it because it *is* the democratic forum for ideas and community debate (Hess and Waller, 2017). It should be noted that democracy begins at the local level, so defining news that serves the public interest, especially in regards to matters of politics and civic institutions, needs to accommodate this foundational concept.

The broader array of social aspects of news have also been included in our definition. Social information is defined as information relevant to the realm of our everyday lives. When we look closely at some of this social content we can appreciate how important information nodes can be to constructing and reinforcing social imaginaries, understandings of community and place, morality, rituals and social honour.

Such information may be referred to as stories recognizing the success, milestones, tragedy, despair and success of individuals (human interest stories); solutions journalism that brings people together to advocate social change; curated and contextualized weather and traffic and transport reports/incidents; reporting and synthesis of events, obituaries, feature articles, travel and lifestyle content.

Definition of News/Public Interest Journalism

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.

CPA notes that while the DPI Final Report did not define "news", it included a definition of 'public interest journalism';

“journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision making at all levels of government”.

CPA considers that if news were only defined in these terms, content of significant value produced to advance the interests of a public, common or shared social good, would be undervalued and potentially under-resourced as a result.

As an example, in many local and regional communities, the local sporting club forms an integral part of the social fabric of the community. To exclude information of the weekend results, happenings around the club, and player or club milestones as “news”, is to seriously undervalue “journalism of vital interest to our public”, and would not advance social good.

Objective identification of content subject to the Code

CPA’s definition of news provides scope to easily and objectively identify the content subject to the code. Originality of news content should be understood as news that is produced or curated by a journalist(s) who has the ability to think independently and creatively and where such content has not been published elsewhere. Such news content should contain a byline attributing the creation/curation of content to that professional journalist(s) and it must be original content unless it meets conditions of the fair dealing exception of Australian copyright infringement laws.

The importance of *relevance* must also be considered in tandem with originality. For example, a local news outlet that reports on an international news event that has no relevance to the ‘local’ audience it serves would not meet the criteria.

Relevance to news audiences can be measured in terms of proximity and scope – the most prominent news value for local journalism is arguably ‘proximity’. This relates to information and events that are geographically or physically close to readers while the concept of scope (Shoemaker et al 2007) refers to the role news media plays in contextualising local, state, national or international issues for a relevant audience as part of their role in information flows and movements.

Digital Platform Services to be covered by the code

CPA recognises the wide range of services offered by the digital platforms (predominantly Google and Facebook) that extends beyond their flagship consumer offerings.

We support the identification of any services operated by these, or any platform, being captured by the Code on a principle based criteria.

If the service of any digital platform uses the defined news content of any member of our tier, that service will be included on the dynamic list referenced in the bargaining code.

Data Sharing and Algorithmic Transparency

Data Sharing

CPA considers that the Bargaining Code is not the appropriate instrument for addressing the use of personal and other data by digital platforms. The ACCC noted in the final report of its Digital Platforms Inquiry that the digital platforms' significant market power derives in part from the use of people's data.

Better regulation in the privacy arena will provide more transparency and integrity around issues of data use for all parties. CPA support the reform of privacy law to address such concerns.

Algorithmic Transparency

CPA considers that increased transparency would better inform the questions around value exchange. At the moment, information asymmetry persists in favour of the digital platforms on this point. This inequity may be partially solved by an algorithmic explainer, rather than more extensive transparency, a solution that may be more practicable.

Underlying the specific concerns of our members that are the focus of the Bargaining Code, there is a wider social concern that the prioritisation of content viewed by users is currently determined in opaque ways.

CPA notes that the ACCC's current Ad Tech Inquiry, to which we have provided a submission, is likely to shed more light on this issue and that the bargaining code may not be the most appropriate instrument for implementing and enforcing algorithmic transparency.

However, the code should include enforceable obligations on the digital platforms with regard to both notification of changes that significantly affect all news media organisations and algorithmic rankings.

Digital platforms should notify news media businesses of algorithmic changes that will have significant, detrimental impact upon the flow of traffic to their operations.

Bearing in mind the public good aspect of journalism, we suggest that the amount of notice required should turn on the percentage of a news media business's traffic that might be affected by an algorithmic change.

The precise threshold (eg 5 per cent) would require sensitivity analysis and should be agreed between the parties, especially as the impact of changes in traffic flow will vary for each news media business.

CPA believe adequate notification of algorithmic change will be an important compliance requirement for the digital platforms within the code.

Furthermore, CPA's general principle under the bargaining code, is that algorithmic rankings should favour original, local, trusted and reliable content. This conforms to the factors that we have outlined in our definition of news, and Independent Media Tier criteria.

Originality

CPA believes it is vital original news content is prioritised on each of Google and Facebook.

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 to distinguish original content that is not otherwise not materially different from other content.

It is important to give credit to content generated by publications for recognition under the Bargaining Code, 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.

Rather than rehash, republish, replicate or rewrite, the production of original content requires not only a greater number of journalists, but better reporting, writing and investigative skills to perform the function of original content creation.

Recognition and incentive to generate original news via a mechanism to monetise this content on the digital platforms, will support the resourcing of journalists to generate diverse public interest journalism that is at the core of our democracy generally. More specifically for CPA members, their original news content is the glue that binds, informs and creates "community" They are their communities (often only) journal of record.

Display and presentation of news

Concept Paper question 43

What restrictions on the display and presentation of news content on digital platforms do you consider necessary, and why?

It is difficult to sustain an argument for any restriction on the presentation of news on matters of public interest – it becomes an issue of acknowledgement and appropriate compensation. Such arrangements were once common between media outlets but have largely disappeared in recent years; media outlets commonly use content from others' sites without any attempt to negotiate or pay compensation – or even acknowledgment of the source. This tendency has certainly become pronounced, if not effectively caused by, the flagrant disregard of copyright online.

Control over advertising directly associated with news

CPA is concerned that the digital platforms' policies and practices affecting advertising directly associated with news restrict their ability to monetise content.

Such advertising commonly includes display advertising, text and image-based advertisements that appear alongside news content, and embedded video advertising: video advertising contained within video-format news content produced by news media businesses; this can often take the form of short advertisements before ('pre-roll'), during ('mid-roll') or after ('post-roll') the news content

Social media do not allow associated advertising to be used in their platforms.

An example of this related to Facebook posts. News content providers benefit from utilizing the Facebook news feed to amplify content to audiences accustomed to using the feed to keep up to date with news. In some cases, publishers wish to use this news feed to post integrated content (native) to the platform. Integrated content is intended to inform the public about business activity, innovation, openings and other news about activity in a community that relates to local business, products or services. However, in doing so a publisher places at risk their presence on Facebook as the platform may determine the activity of posting information that promotes a business is in breach of the platform's policies around advertising. Where a publisher now relies on the news feed to engage audiences due to the dominant position, great care must be taken to avoid exclusion due to a platform policy restriction. Exclusion might mean the loss of the publisher's page due to automated enforcement by the platform. The restriction for a publisher that limits the ability to choose what content is posted to the platform is very limiting and makes monetizing our content another obstacle in achieving sustainability. Star therefore would encourage a greater range of freedom to post content that at our determination is relevant to our audiences and the communities we serve without fear of retaliation from Facebook for displaying content that may otherwise be deemed as advertising.

Country Press Australia recognises contributions to this submission by;

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Public Interest Journalism Initiative