



## **Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020**

*Submission by Country Press Australia*

### **Background**

The ACCC was asked by the Federal Government to launch an enquiry into the impact of the Digital Platforms on news media organisations in December 2017. Almost three years later, following numerous round tables with the ACCC, submissions and hearings, plus discussions and round tables with Google and Facebook the ACCC released an Exposure Draft for the New Media and Digital Platforms Mandatory Bargaining Bill for consideration and comment.

Country Press Australia (CPA) is the representative body for over 140 regional and local mastheads across Australia, and has been an active participant from the inception of this world leading initiative to address the bargaining power imbalance between Australian news media businesses and digital platforms.

CPA welcomes the opportunity to further engage with the ACCC and the Federal Government by providing a response to the exposure draft of the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020.

It is noted, that the ACCC has been commendably supportive of the importance of independent journalism in regional and rural areas. It has also recognised the unique and distinct needs of small publishers.

Yet the Exposure Draft itself provides no guidance and little substantive recognition of the lack of available resources and expertise of regional, rural and small publishers to negotiate this complex agreement with two of the largest and most powerful companies in the world.

At the core of our submission, is the need to define, clarify, provide detail and guidance on certain provision to minimise the time, cost and complexity in the bargaining process and ultimately, arbitration.

Country Press Australia is deeply concerned that this code favours large media businesses significantly and has little consideration for small and medium news businesses. The result is sure to be a reduction in the diversity of media with large media organisations strengthening at the expense of the smaller media organisations. The ACCC must consider this factor closely. The arbitration process, even as a collective will be difficult, costly and time consuming. This process should be improved.

CPA submits that there must be clearer guidance on the outcomes of bargaining and that the parties need more clarity on the valuation of indirect benefit. The ACCC should consider that the key method of valuation should be based on the number of journalists employed. The payment made by the digital platforms be a percentage of that cost, with an upper limit for any entity including related bodies corporate of a percentage of the direct cost to employ journalists. If there is no limit and no certainty, this code risks significant unintended consequences which will almost certainly result in large media businesses benefiting from this code significantly more than small media organisations and result in unfair commercial competition. The result will almost certainly see large media businesses push out smaller organisations, resulting in less choice for consumers, and once again significantly eroding the diversity of media in Australia.

CPA strongly urges consideration of a timeframe prior to legislating the code for organisations to finalise agreements between the digital platforms and publishers and avoid unnecessary lengthy delays and costly processes, aimed at large media organisations only.

CPA is confident, given the spectre of the ACCC Mandatory Code, independent agreements can be struck by the majority of small to medium organisations and CPA is willing to assist that process. If a three month window can be provided to achieve this outcome prior to consideration of legislation then the ACCC may then consider how the legislation may need to look in a different way.

## **1. Division 1 - Basic Concepts**

### **52 A Definitions**

Definitions of *core news content* and *covered news content*, both refer to a journalist, yet a journalist is not defined or clear.

*CPA believes this should be clearly defined along with further clarification about what core news content does not include. CPA believes much more consideration needs to be taken and put forward:*

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.

A journalist, then, is an individual who abides by a professional code of conduct and has received education, training and/or formal mentorship in journalism practice and whom has a responsibility to produce such news content.

Core News is covered and defined by the code, but all news produced by an eligible business can be *negotiated* with a digital platform for inclusion in bargaining, although all news is included in the minimum standards.

Core News Content (includes) content that in (iii) relate to community and local events. However, community and local events are not specifically defined, although 2.2 of the Q&A indicates reporting about sport and interviews with coaches and players are considered covered news rather than core news, and a result need to be negotiated for inclusion.

In the rural, regional and local areas serviced by CPA members, sport is often both the most significant and important community *and* local event.

*CPA submits that a definition of “community and local events” should include sports journalism and reporting where it contributes to the sense of cohesion and well being of a community for regional and rural newsmedia businesses.*

## **2. Division 3 – Registered News Businesses**

The essence of the Code is to reflect the direct and indirect commercial value of the audiences attracted to the digital platforms by their use of content produced by news media businesses. This commercial value gained by the digital platform has come at the expense of those very commercial business who produce that content.

As a result, the equitable outcome is for a portion of that value to be returned to those commercial news media businesses that have been impacted, and only them.

This will assist to sustain independent and diverse journalism vital to a healthy democracy.

*CPA fully supports 52Y (6) and submits that in addition to SBS and ABC, clause 52Y (6) should also include any news business corporation with revenues under \$1,000,000 and are not for profit. CPA is concerned that if this is not altered there will be unintended consequences which will in fact lead to the reduction of professionally produced local journalism.*

**Section 52D** and 1.44 of the exposure draft explanatory materials requires a news business corporation to nominate every news source for the purposes of the code. The news sources of news businesses are likely to evolve and differ as the media landscape continues to change.

*CPA submits there must be provision for a news business corporation to include additional news sources.*

### **52G Revenue tests**

Registered news businesses must have \$150,000 revenue in preceding Financial Year or in at least 3 of the 5 preceding Financial Years.

CPA accepts that a minimum level of revenue is necessary to provide a practical bargaining position.

As an employer representative body, we aim to represent all members whenever possible. However, we are not privy to the total revenue generated by members.

*CPA submits that an opportunity to review the annual revenue figure on a regular basis according to sound commercial principles, and certainly at the first 12 month review, be included in the Code.*

CPA supports new entrants to increase diversity and provide underserved communities the opportunity to access independent local public interest journalism.

The decision by large media groups to abandon and/or curtail the provision of local public interest journalism in many rural and regional areas has encouraged new entrants to fill the void in those areas.

The requirement to provide “the most recent year” is practical for established businesses, however, excludes the participation of new entrants, who otherwise qualify.

*CPA submits the Code include a provision for new entrants to be eligible under 52G on the provision of a minimum of six months operation, and a Statutory Declaration verifying their revenue over a minimum of 3 consecutive months is annualised at a minimum of \$150,000.*

### **Section 52K Professional standards test**

CPA supports that the Code already requires a participant to be subject to (a) a professional standard or code including the Australian Press Council, or like body, and (b) editorial independence.

CPA also considers this code should be extended not only to the news media business, but also to their employees to ensure professional standards are required by the journalists who produce the content that is at the core of the code.

*CPA submits that the professional standards test should include the requirement to become an eligible news business include the employment of at least 1 journalist.*

### **3. Division 4 – Minimum Standards etc**

CPA asks the ACCC to consider the practical application of the various minimum standards and ensure that this element of the code is not the major hurdle for an agreement to be reached.

CPA submits to the ACCC that the minimum standards are not compulsory in an agreement and that an agreement may be reached independent of these standards.

#### **4. Division 6 – Bargaining**

There seems to be no provision for an association/peak body like CPA to be the registered bargaining agent. It only references a registered news business corporation bargaining on behalf of a second registered news business corporation.

CPA understands many of its members will elect to appoint it as their preferred negotiating agent in the bargaining process.

*CPA submits the Code include a provision to allow the appointment of a nominated bargaining agent, whether that be a peak body, legal counsel or any other appropriate entity is vital to facilitate the most effective, cost efficient and informed bargaining process.*

The bargaining process may require legal assistance and significant costs if it reaches the point of arbitration.

By providing clear guidance about how the value will be determined at arbitration, the time and cost at this stage is likely to be minimised. Otherwise, small operators will find this stage extremely difficult, costly and intimidating.

There is currently no detail about what the final offer should incorporate, although 52ZP does provide some incite. The process seems to be based on large corporate businesses with extensive resources and knowledge. 52ZO provides for a final offer no more than 30 pages in length which in itself is a significant document.

4.3 in the Q&A paper lists costs of between \$800 and \$2,000 per day. Therefore just the arbitrator costs alone will most likely cost many thousands of dollars. The arbitration decision will only result in an agreement for one year.

*CPA submits that the mediation process should be at the choice of the registered news corporation.*

#### **5. Division 7 – Arbitration about remuneration issue**

##### **52ZO Final offer arbitration**

(6) Although (5) defines the instances where final offers are not in the public interest, no guidance on how the adjusted remuneration is determined is provided.

*CPA submits that there must be much clearer guidelines on how to value news content in through a value exchange. Consideration should be given to using the number of journalists employed as the measure and that the digital platforms pay a percentage of that cost.*

*CPA submits that there must be an upper limit to the cost and this should be based on a maximum number of journalists any single news organisation, plus its body corporates can claim.*

### **52ZP Matters to consider in arbitration**

(2) While (c) provides for the cost to the registered news businesses of producing covered news content to be considered during arbitration, CPA believes there needs to be greater consideration of the type of news provided by our members, i.e. unique content to local and niche audiences.

This is the key issue in relation to the impact of the digital platforms on news media that is being addressed by the Code.

*CPA submits 52ZP should include a clause that specifies news content covering a topic commonly available across other media is weighted lower in this consideration of value than news that is unique and available nowhere else.*

Overall Division 6 does not seem to cater for the majority of CPA members. The process could become so time-consuming, costly and intimidating it is likely that a small media business will simply not be able to participate. Given that a media business can only appoint another registered news business corporation to bargain on its behalf and there is no provision for an organisation like CPA to bargain, this draft needs to be amended. 2.3 of the Q&A paper claims that smaller and regional publishers will benefit from the proposed process in the code. Based on the above points this would not seem to be an accurate assessment.

### **Conclusion:**

This code has the potential to be the most significant sustainability development for news media organisations in decades.

CPA submits the Bill as it stands requires changes, especially in relation arbitration and bargaining processes, the minimum standards and in particular the guidance on value (numbers of journalist employed) and a defined limit the arbitration process can apply to the digital platforms. If some of these do not get changed it would appear that the bill as legislation will not be workable.