

Submission
ACCC consultation
Mandatory bargaining code
from Croakey Health Media

5 June, 2020

CROAKEY HEALTH MEDIA

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1. Introduction

This submission is from directors and members of the non-profit public interest journalism organisation, Croakey Health Media. It is also sent on behalf of other members of our social journalism team.

Please see [Appendix A](#), *CHM organisational structure and governance*, for the signatories to this submission.

We express our sincere thanks to the ACCC for inviting this contribution to the consultation process for the development of a mandatory code governing commercial relationships between media publishers and the digital platforms, Facebook and Google.

We also acknowledge and thank the ACCC for holding a virtual consultation with Croakey Health Media's Managing Editor, Dr Melissa Sweet, and Membership Secretary and Editor, Marie McInerney, on 25 May 2020.

2. Croakey Health Media

An in-depth overview of the history and activities of Croakey Health Media was provided in our submission to the ACCC Digital Platforms Inquiry on 19 February 2019.

<https://www.accc.gov.au/system/files/Croakey%20Health%20Media%20%28February%202019%29.PDF>

For a more recent update on our activities, please see these attached documents: Croakey Health Media (May, 2020). *Profiling innovation and developments in healthy journalism: Report to stakeholders 2018-2019*. Available at:

<https://croakey.org/croakey-publications/>

Croakey Health Media (May, 2020). *Informed, in-depth coverage of the COVID-19 pandemic*. Available at:

<https://croakey.org/croakey-publications/>

3. General principles to inform development of the code

3.1. The public interest must be paramount

Public interest journalism is not simply another commercial product. It is an under-served public good in Australia, and some communities, geographic areas and topics are especially under-served. The COVID-19 pandemic has exacerbated the crisis in public interest journalism globally and also in Australia, revealing the failure of existing policy frameworks to ensure a sustainable future for this essential service. During the pandemic, news rooms around the world have suffered cuts and closures at the same time as demand for public interest journalism has increased dramatically.

The pandemic has highlighted both the importance and the fragility of some of the key roles of public interest journalism:

- scrutinising and holding governments and other powerful stakeholders to account;
- contributing to informed communities and helping to inoculate them against misinformation in all its forms;
- communicating individual actions that will impact on public health;
- disseminating local information for local decision making; and
- providing a platform for diverse communities to ensure policies are responsive to their needs.

The mandatory code between media organisations and the digital platforms is a critical opportunity for addressing matters of profound and wide-reaching public importance. Explicit efforts are needed to ensure civil society is able to contribute to the code's development, implementation and review. This will require determined attention to issues of procedural justice and equity, as many civil society organisations may not have commensurate resources to contribute. These matters are too important to leave as negotiations between media organisations and the digital platforms. Public interest, rather than commercial imperatives, should be centred in the processes and the outcomes.

We know from policy development in other areas, such as healthcare policy, that developing structures and mechanisms to enable community voices to contribute (through the establishment and funding of bodies such as Aboriginal Community Controlled Health Services and the Consumers Health Forum of Australia, for instance) provides a counter-balance to the power of vested interests in determining policy outcomes, and leads to more effective policies that represent better investment for

taxpayers and wider communities. Media policy development – which has often been driven by the commercial interests of established corporate media organisations, rather than the public interest – could learn from such efforts in health policy to develop structures and processes to support the contributions of community interests.

3.2. Privilege public interest journalism

The negotiations and outcomes for the code should privilege public interest journalism, rather than generic news content. A broad understanding of public interest journalism should be adopted rather than a narrow definition limited to a specific form of public interest journalism, as sometimes happens, viz a viz investigative journalism. Public interest journalism (as defined in the Croakey Health Media strategic plan) “gives people the information they need to take part in the democratic process. It informs and contributes to policy and practice. It holds power to account, and amplifies the voices of those who are not well served by the current distribution of power”. It may have a local, national or global focus. Its roles are particularly important in the digital era, where misinformation has become a critical threat to the health of democracies, communities and people.

Public interest journalism has the ability to provide expert, in-depth analyses of issues at a time when mainstream media journalism is becoming less specialised, and less able to provide in-depth, rigorous coverage of science, medical, and health issues, as well as the wider determinants of health and wellbeing. Public interest journalism can provide a forum for the discussion of ideas and policies, and the dissemination of knowledge.

3.3 Support innovation and non-profit and emerging models of public interest journalism

The non-profit public interest journalism sector is under-developed in Australia; structural development of this sector should be supported. This will also bring benefits for policy development and related processes.

The wider public interest journalism sector includes ABC, SBS, The Conversation and independent media such as IndigenousX and Inside Story.

The allocation of revenue under the code should incorporate wider considerations than simply the revenue of participating media organisations. Metrics are needed to consider wider public interest impacts, with special consideration given to under-served geographic areas, communities, and topics.

3.4. Level the playing field

The playing field currently privileges large media organisations and disadvantages independent and smaller media organisations, which are not in a position to negotiate equitably within the media industry, or with Google and Facebook.

The digital platforms should be required to set aside specific and separate resources for smaller media organisations in order to have these conversations.

Governments or government agencies should ensure structural support is available to ensure equitable processes and outcomes.

4. Responses to specific questions

Due to some of the issues mentioned above, Croakey Health Media does not have access to in-house legal or other specialist expertise to enable us to contribute to many of the specific consultation questions.

Below we respond briefly, where we are able. These responses were also given verbally during the virtual consultation.

1. How should ‘news’ be defined for the purpose of determining the type of content that will be subject to the bargaining code?

CHM: *Public interest journalism should be privileged in view of both its wider importance, and the particular funding crisis that it faces.*

7. What are the necessary elements for a bargaining framework to effectively address the bargaining power imbalance between news media businesses and each of Google and Facebook?

CHM: *Structural support for independent and non-profit media organisations – individually and as a sector – to address power imbalances within the media sector, as well as between media organisations and the digital platforms. This could include legal and administrative support, wider policy and law reform as outlined in previous inquiries, and support to develop the non profit and independent media sector, for example, through representative organisations.*

8. How effective would the following bargaining frameworks be in achieving appropriate remuneration for news media businesses for the use of news content by each of Google and Facebook:

- bilateral negotiation, mediation and arbitration
- collective bargaining
- collective boycott or ‘all in/none in’?

CHM: *Collective bargaining but with an independent arbiter or separate mechanisms for the independent and nonprofit sector.*

13. How relevant are the following factors to determining appropriate remuneration for news media business:

- the value of news to each digital platform
- the value a news media business derives from the presence of its news on each digital platform
- the value of the availability of news on each relevant digital platform to digital platform users?

CHM: *Allocation of revenue should be determined according to the production of public interest journalism, with specific regard for under-served communities, geographic areas and topics - rather than on the basis of the revenue of a media organisation.*

14. Would it be appropriate for commercial negotiations conducted under the bargaining code to have regard to the cost of producing news content?

CHM: *The cost of producing public interest journalism should be considered, recognising that non-profit organisations may be much more efficient, due to necessity and also reflecting a commitment that transcends commercial imperatives.*

16. What other factors may be relevant to determining appropriate remuneration for news media businesses?

CHM: *Their commitment to producing public interest journalism, particularly to address under-served communities, geographic areas and topics.*

19. How might any bargaining framework implemented by the bargaining code deal with the full range of businesses present in the Australian news media industry, including smaller, local and regional news media businesses and not-for-profit news media organisations?

CHM: *As part of the code, structural support and funding should be directed towards supporting the development and capacity of the public interest journalism sector, at individual organisational and sectoral levels.*

21. What specific user data do news media businesses already receive from each of Facebook or Google in relation to users' engagement with news media business content and what further user data would news media businesses like to receive from each of Facebook and Google?

CHM: *The digital platforms should be proactive in informing public interest journalism organisations about the range of data already available, and developing future opportunities.*

28. Would it be appropriate for each of Google and Facebook to provide each news media business with a list of all types of user data they collect through users' engagement with their news content on their services, such as data collected on users accessing content published in the AMP and Instant Articles formats?

CHM: *Yes*

38. How could 'original news content' be defined and identified under the bargaining code, and who should be responsible for defining or identifying this content?

CHM: *As per our suggestions in Section 3, regarding general principles, the community and public interest advocates should be part of this process, as well as public interest journalism practitioners and advocates.*

39. Should any bargaining code requirement to prioritise original content distinguish between original investigative journalism and other types of news content? If so, how could this distinction be drawn?

CHM: *Please see our definition of public interest journalism in section 3. IE, don't limit this to investigative journalism.*

53. Would a point of contact outside of Australia be able to sufficiently address concerns of news media businesses in a timely manner?

CHM: *We would welcome this opportunity. We currently do not have such access. As described in the virtual consultation, we have had a number of problems with Twitter algorithms closing down key accounts during journalism activities. This had the impact of excluding key Aboriginal health voices from public interest journalism activities.*

57. What would be the most appropriate and effective mechanisms for resolving disputes about, and enforcing, compliance with the bargaining code?

CHM: *An external arbiter with a brief to privilege wider public interest concerns.*

59. Should the bargaining code include a compulsory review mechanism? If so, when and how often should this compulsory review occur?

CHM: *We support a compulsory, transparent and accountable review mechanism at regular intervals.*

Appendix A

CROAKEY HEALTH MEDIA

Organisational structure and governance

This diagram explains the purpose and structure of Croakey Health Media, a non profit public interest journalism organisation. Croakey Health Media is a membership-based organisation. The membership is made up of members of the social journalism team. Not all members of the social journalism team are members of Croakey Health Media. The members of Croakey Health Media appoint the directors/board members, who provide overall governance at an organisational level. Editorial governance is provided by the social journalism team through the managing editor.



Roles

ME: Managing editor

E: Editor

CE: Contributing editor

CD: Creative director/web development

BD: Director, Business Development and Relationship Management

DF: Director of finances

SJ: Social journalism team

CV: Croakey Voices

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