2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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

No.  , 2020

(Treasury)

A Bill for an Act to amend the Competition and Consumer Act 2010 in relation to digital platforms, and for related purposes
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A Bill for an Act to amend the Competition and Consumer Act 2010 in relation to digital platforms, and for related purposes

The Parliament of Australia enacts:

1 Short title


2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Digital platforms and Australian news businesses

Part 1—Main amendments

Competition and Consumer Act 2010

1 After Part IVB

Insert:

Part IVBA—Digital platforms

Division 1—Basic concepts

52A Definitions

(1) In this Part:

ABC means the Australian Broadcasting Corporation.

ACMA means the Australian Communications and Media Authority.

bargaining issues has the meaning given by section 52ZA.

bargaining news business corporation, for a registered news business, has the meaning given by section 52X.

bargaining parties has the meaning given by section 52ZA.

core news content means content that:

(a) is created by a journalist; and

(b) that records, investigates or explains issues that:

(i) are of public significance for Australians; or

(ii) are relevant in engaging Australians in public debate and in informing democratic decision-making; or

(iii) relate to community and local events.
Schedule 1 Digital platforms and Australian news businesses

Part 1 Main amendments

covered news content means content that is any of the following:

(a) core news content;
(b) content that is created by a journalist and is relevant in
    recording, investigating or explaining issues of interest to
    Australians.

designated digital platform corporation means a corporation that
is specified as a designated digital platform corporation in a
determination under section 52C.

designated digital platform service means a service that is
specified as a designated digital platform service in a determination
under section 52C.

digital platform service has the meaning given by section 52B.

news business means:

(a) a news source; or
(b) a combination of news sources.

news source means any of the following, if it produces, and
publishes online, news content:

(a) a newspaper masthead;
(b) a magazine;
(c) a television program;
(d) a radio program;
(e) a website;
(f) a program of audio or video content designed to be
distributed over the internet.

registered news business means a news business that is registered
by the ACMA under subsection 52E.

registered news business corporation, for a registered news
business, means the corporation that is registered under subsection
52E as the registered news business corporation for the registered
news business.

register of bargaining code arbitrators means the register
established under section 52ZE.
remuneration issue has the meaning given by subsection 52ZF(1).

represented registered news business has the meaning given by section 52ZA.

responsible digital platform corporation for a digital platform service is:

(a) a corporation that:
   (i) is a related body corporate of the service’s designated digital platform corporation; and
   (ii) if the corporation is not incorporated in Australia—is managed in Australia; and
   (iii) either by itself or together with other corporations, operates or controls the digital platform service in supplying services that are used by Australians; or
(b) if there is no corporation that satisfies the requirements of paragraph (a)—the service’s designated digital platform corporation.

SBS means the Special Broadcasting Service Corporation.

52B Meaning of digital platform service

A service is a digital platform service of a designated digital platform corporation if:

(a) the designated digital platform corporation, either by itself or together with one or more related bodies corporate of the corporation, operates or controls the service; or
(b) a related body corporate of the designated digital platform corporation, either by itself or together with one or more other related bodies corporate of the corporation, operates or controls the service.
Division 2—Designated digital platform corporation and designated digital platform services

52C Treasurer may make designation determination

(1) The Treasurer may, by legislative instrument, make a determination that:

(a) specifies a corporation that, either by itself or together with other corporations, operates or controls a digital platform, as a designated digital platform corporation; and

(b) specifies one or more digital platform services of that designated digital platform corporation as designated digital platform services of the corporation.

(2) In making the determination, the Treasurer must consider whether there is a significant bargaining imbalance between Australian news providers and the group comprised of the corporation and all of its related bodies corporate.

(3) The determination is not invalid merely because of a failure by the Treasurer to comply with subsection (2).

(4) In making the determination, the Treasurer may consider any reports or advice of the Commission.

Division 3—Registered news businesses

52D Application for registration of news business and news business corporation

(1) A corporation (the applicant corporation) may apply to the ACMA for:

(a) the registration of a news business; and

(b) the registration of the corporation as the registered news business corporation for the news business.

(2) The application must:

(a) be in writing; and
(b) set out every news source that comprises the news business; and
(c) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.

(3) The news business set out in the application (as mentioned in paragraph (2)(b)) may be comprised of some or all of the news sources that the applicant corporation, either by itself or together with other corporations, operates or controls.

52E Registration of news business and news business corporation

(1) The ACMA must register the news business (and the applicant corporation as the registered news business corporation for the news business) if the ACMA considers that:
(a) the application is in accordance with subsection 52D(2); and
(b) none of the news sources set out in the application in accordance with paragraph 52D(2)(b) form part of another news business that is a registered news business; and
(c) the applicant corporation meets the requirement in section 52F (connection between applicant corporation and news business); and
(d) the applicant corporation meets the requirement in section 52G (the revenue test); and
(e) all of the following requirements are met:
(i) the requirement in subsection 52H(1) (the content test);
(ii) the requirement in subsection 52J(1) (the Australian audience test);
(iii) the requirement in subsection 52K(1) (the professional standards test).

(2) The ACMA must publish details of the registrations on the ACMA’s website.

(3) The ACMA may revoke the registration of a registered news business (and of the registered news business corporation for the registered news business) if the ACMA considers that any of the requirements mentioned in paragraph (1)(c), (d) and (e) are no longer met.
52F Requirements for connection between applicant corporation and news business

For the purposes of paragraph 52E(1)(c), the requirement is that the applicant corporation, either by itself or together with other corporations, operates or controls the news business.

52G Revenue test

For the purposes of paragraph 52E(1)(d), the requirement is that the applicant corporation’s annual revenue, as set out in its annual accounts prepared in accordance with generally accepted accounting principles, exceeds $150,000:

(a) for the most recent year for which there are such accounts; or
(b) for at least 3 of the 5 most recent years for which there are such accounts.

52H Content test

(1) For the purposes of subparagraph 52E(1)(e)(i), the requirement is that each news source covered by subsection (2) creates, and publishes online, content that is predominantly core news content.

(2) This subsection covers a news source if it is set out in the application (in accordance with paragraph 52D(2)(b)).

52J Australian audience test

(1) For the purposes of subparagraph 52E(1)(e)(ii), the requirement is that all the news sources covered by subsection (2) (considered as a whole) operate predominantly in Australia for the dominant purpose of serving Australian audiences.

(2) This subsection covers a news source if it is set out in the application (in accordance with paragraph 52D(2)(b)).

52K Professional standards test

(1) For the purposes of subparagraph 52E(1)(e)(iii), the requirement is that:
(a) every news source covered by subsection (2):
   (i) is subject to the rules of the Australian Press Council or
       the Independent Media Council; or
   (ii) is subject to the rules of the Commercial Television
       Industry Code of Practice, the Commercial Radio Code
       of Practice or the Subscription Broadcast Television
       Codes of Practice; or
   (iii) is subject to rules substantially equivalent to those
       mentioned in subparagraph (i) or (ii) regarding internal
       editorial standards that relate to the provision of quality
       journalism; and

(b) every news source covered by subsection (2) has editorial
    independence from the subjects of its news coverage.

(2) This subsection covers a news source if it is set out in the
    application (in accordance with paragraph 52D(2)(b)).

**Division 4—Minimum standards etc.**

**Subdivision A—The minimum standards**

**52L Obligations in respect of digital platform services individually**

(1) The provisions of this Subdivision and Subdivision B create
    obligations in respect of every digital platform service, in respect
    of each registered news business.

(2) Those obligations are placed on the responsible digital platform
    corporation for the digital platform service, in respect of the
    registered news business corporation for the registered news
    business.

(3) If there is more than one responsible digital platform corporation
    for the digital platform service, those obligations are placed on
    each of those responsible digital platform corporations separately.
    If so, references in this Subdivision and Subdivision B to the
    responsible digital platform corporation for the digital platform
    service are taken to be references to each responsible digital
    platform corporation for the digital platform service.
52M Giving explanations of information etc.

(1) The responsible digital platform corporation for the digital platform service must ensure that:

(a) information covered by subsection (2) is given to the registered news business corporation for the registered news business; and

(b) the information is given in terms that are readily comprehensible; and

(c) the information is given to the registered news business corporation no later than 28 days after the day on which the registered news business was registered under section 52E; and

(d) if regulations made for the purposes of this paragraph specify other requirements for that information—those requirements are satisfied.

(2) This subsection covers the following information:

(a) a list and explanation of the data that the digital platform service collects (whether or not it shares the data with the registered news business) about the registered news business’ users through their engagement with covered news content made available by the digital platform service;

(b) a list and explanation of the products and services supplied by the digital platform service that collect data about the registered news business’ users through their engagement with covered news content made available by the digital platform service;

(c) a list and explanation of the data that the digital platform service currently has a practice of making available to registered news businesses;

(d) an explanation of how the form of the data mentioned in paragraph (c) differs from the form of the data collected by the digital platform service about users of the digital platform service;

(e) information about how the registered news business corporation can gain access to the data mentioned in paragraphs (a) and (c).
(3) The responsible digital platform corporation for the digital platform service must ensure that:
   (a) updated information covered by subsection (2) is given annually to the registered news business corporation for the registered news business; and
   (b) the updated information is given in terms that are readily comprehensible; and
   (c) the updated information is given to the registered news business corporation no later than 12 months after the later of the following days:
      (i) the day on which information was given to the registered news business corporation in accordance with subsection (1); or
      (ii) the most recent day on which updated information was previously given to the registered news business corporation in accordance with this subsection; and
   (d) if regulations made for the purposes of this paragraph specify other requirements for the updated information—those requirements are satisfied.

52N Algorithmic ranking of covered news content

(1) Subsection (2) applies if:
   (a) changes are planned to be made to an algorithm of the digital platform service; and
   (b) the changes are likely to have a significant effect on the ranking of the registered news business’ covered news content made available by the digital platform service.

(2) The responsible digital platform corporation for the digital platform service must ensure that:
   (a) notice of the change is given to the registered news business corporation for the registered news business; and
   (b) the notice is given:
      (i) unless subparagraph (ii) applies—at least 28 days before the change is made; or
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(ii) if the change relates to a matter of urgent public interest—no later than 48 hours after the change is made; and

(c) the notice describes the change, and the effect mentioned in paragraph (1)(b), in terms that are readily comprehensible; and

(d) the notice describes how the registered news business can minimise negative effects of the change on the ranking of its covered news content made available by the digital platform service.

52O  Ranking and display of paywalled content

(1) Subsection (2) applies if:

(a) changes are planned to be made to an algorithm of the digital platform service; and

(b) the changes relate to the registered news business’ covered news content; and

(c) the changes are specifically designed to have an effect on the ranking or display of content behind a paywall.

(2) The responsible digital platform corporation for the digital platform service must ensure that:

(a) notice of the change is given to the registered news business corporation for the registered news business; and

(b) the notice is given at least 28 days before the change is made; and

(c) the notice describes the change, and the effect mentioned in paragraph (1)(c), in terms that are readily comprehensible.

52P  Display of covered news content

(1) Subsection (2) applies if:

(a) changes are planned to be made to internal policies and practices of the digital platform service; and

(b) the changes are likely to have a significant effect on the display and presentation of the registered news business’
covered news content made available by the digital platform service.

(2) The responsible digital platform corporation for the digital platform service must ensure that:

(a) notice of the change is given to the registered news business corporation for the registered news business; and

(b) the notice is given:

(i) unless subparagraph (ii) applies—at least 28 days before the change is made; or

(ii) if the change relates to a matter of urgent public interest—no later than 48 hours after the change is made; and

(c) the notice describes the change, and the effect mentioned in paragraph (1)(b), in terms that are readily comprehensible.

52Q  Display of advertising

(1) Subsection (2) applies if:

(a) changes are planned to be made to an algorithm of the digital platform service; and

(b) the changes are likely to have a significant effect on the display and presentation of advertising directly associated with the registered news business’ covered news content made available by the digital platform service.

(2) The responsible digital platform corporation for the digital platform service must ensure that:

(a) notice of the change is given to the registered news business corporation for the registered news business; and

(b) the notice is given:

(i) unless subparagraph (ii) applies—at least 28 days before the change is made; or

(ii) if the change relates to a matter of urgent public interest—no later than 48 hours after the change is made; and

(c) the notice describes the change, and the effect mentioned in paragraph (1)(b), in terms that are readily comprehensible.
52R Facilitating open communication—responsible digital platform corporation for digital platform service

The responsible digital platform corporation for the digital platform service must:

(a) set up a point of contact in Australia for the purpose of this section; and

(b) if regulations made for the purposes of this paragraph specify requirements for the point of contact—ensure that the point of contact meets those requirements; and

(c) give details of that point of contact to the registered news business corporation; and

(d) acknowledge every communication to that point of contact from the registered news business corporation that relates to the registered news business’ covered news content made available by the digital platform service; and

(e) if regulations made for the purposes of this paragraph specify requirements for the acknowledgement—ensure that the acknowledgement meets those requirements.

52S User comments

(1) Subsection (2) applies if the registered news business corporation for the registered news business makes a request, in writing, to the responsible digital platform corporation for the digital platform service to do any of the following:

(a) ensure that the registered news business corporation is provided with flexible content moderation tools that allow the registered news business corporation to remove or filter comments on the registered news business’ covered news content that:

(i) are made using the digital platform service; and

(ii) are made on a part of the digital platform service that is set up and able to be edited by the registered news business;

(b) ensure that the registered news business corporation can disable the making of such comments;
(c) ensure that the registered news business corporation can
block the making of such comments:
   (i) by particular persons; or
   (ii) in particular circumstances.

(2) The responsible digital platform corporation for the digital
platform service must comply with the request.

(3) However, the responsible digital platform corporation for the
digital platform service need not comply with the request if:
   (a) regulations made for the purposes of this paragraph specify
       requirements for such a request; and
   (b) the request does not meet those requirements.

Subdivision B—Recognition of original news

52T Recognition of original covered news content

(1) The responsible digital platform corporation for the digital
platform service must ensure that:
   (a) a proposal is developed to recognise original covered news
       content when ranking and displaying news content on the
digital platform service; and
   (b) every registered news business corporation is consulted in
       developing that proposal; and
   (c) the proposal is published no later than 6 months after the first
       registration of a news business under section 52E.

(2) The responsible digital platform corporation for the digital
platform service must ensure that:
   (a) an annual updated proposal is developed to recognise original
       covered news content when ranking and displaying news
       content on the digital platform service; and
   (b) every registered news business corporation is consulted in
       developing that updated proposal before it is published; and
   (c) the updated proposal is published no later than 12 months
       after the later of:
       (i) the day on which a proposal was published in
           accordance with subsection (1); or
(ii) the most recent day on which an updated proposal was
previously published in accordance with this subsection.

Subdivision C—Obligations on registered news business
corporations

52U Facilitating open communication—registered news business
corporation for registered news business

A registered news business corporation for a registered news
business must:
(a) set up a point of contact for the purpose of this section; and
(b) if regulations made for the purposes of this paragraph specify
requirements for the point of contact—ensure that the point
of contact meets those requirements; and
(c) give details of that point of contact to every responsible
digital platform corporation for a digital platform service;
and
(d) acknowledge every communication to that point of contact
from a responsible digital platform corporation for a digital
platform service that relates to the registered news business’
covered news content made available by that digital platform
service; and
(e) if regulations made for the purposes of this paragraph specify
requirements for the acknowledgement—ensure that the
acknowledgement meets those requirements.

Subdivision D—Trade secrets

52V Trade secrets

Nothing in this Division requires the giving of information the
publication of which would reveal a trade secret.
Division 5—Non-discrimination

52W Digital platform service to be supplied on a non-discriminatory basis in relation to registered news businesses’ news content

The responsible digital platform corporation for a digital platform service must ensure that the supply of the digital platform service does not, in relation to crawling, indexing, ranking, displaying or presenting registered news businesses’ news content:

(a) discriminate between registered news businesses, in relation to the application of this Part; or

(b) discriminate between registered news businesses and news businesses that are not registered news businesses, in relation to the application of this Part.

Division 6—Bargaining

Subdivision A—Starting bargaining

52X Bargaining news business corporation for a registered news business

(1) The registered news business corporation for a registered news business is the bargaining news business corporation for the registered news business.

(2) Subsection (3) applies if:

(a) a registered news business corporation (the first corporation) for a registered news business (the first news business) makes an agreement in writing with another registered news business corporation (the second corporation) for another registered news business; and

(b) the agreement provides that the second corporation should be the bargaining news business corporation for the first news business.

(3) Despite subsection (1), the second corporation is the bargaining news business corporation for the first news business.
52Y Notification of bargaining

(1) The bargaining news business corporation for a registered news business may notify a responsible digital platform corporation for a digital platform service that it wishes to bargain over one or more specified issues relating to the registered news business’ covered news content made available by the digital platform service.

(2) If the bargaining news business corporation is the bargaining news business corporation for 2 or more registered news businesses, a notification made for the purposes of subsection (1) may relate to some or all of those registered news businesses.

(3) If the responsible digital platform corporation is the responsible digital platform corporation for 2 or more digital platform services, a notification made for the purposes of subsection (1) may relate to some or all of those digital platform services. If so, references in this Division and in Division 7 to the digital platform service are taken to include references to all of the digital platform services to which the notification relates.

(4) A notification made for the purposes of subsection (1) must set out the following matters:
   (a) the bargaining news business corporation;
   (b) each registered news business to which the notification relates;
   (c) the digital platform service;
   (d) the responsible digital platform corporation for the digital platform service;
   (e) the specified issues mentioned in subsection (1);
   (f) if regulations made for the purposes of this paragraph specify other matters—those matters.

(5) A notification made for the purposes of subsection (1) cannot be later varied to relate to a registered news business that was not set out in the notification.
(6) If a registered news business to which the notification relates is operated or controlled by the ABC or SBS, the specified issues mentioned in subsection (1) cannot include an issue that concerns the remuneration for the registered news business for the making available of the registered news business’ covered news content by the digital platform service.

Subdivision B—Bargaining obligations

52Z Application of Subdivision

This Subdivision applies if a notification is made for the purposes of subsection 52Y(1).

52ZA Bargaining parties, bargaining issues and represented registered news businesses

(1) The bargaining parties are as follows:
   (a) the bargaining news business corporation that made the notification;
   (b) the responsible digital platform corporation for the digital platform service to which the notification relates.

(2) The bargaining issues are the specified issues in the notification (as mentioned in paragraph 52Y(4)(e)).

(3) Each registered news business to which the notification relates is a represented registered news business.

52ZB Obligation to negotiate in good faith

Each bargaining party must negotiate in good faith over each bargaining issue.

52ZC Information requests

(1) The bargaining news business corporation may request the responsible digital platform corporation to give it:
   (a) information and data relating to the digital platform service that is relevant to assessing the benefit that the digital platform service would derive from the arrangements under the code for the making available of the registered news business’ covered news content by the digital platform service.
platform service receives from covered news content of each represented registered news business; and

(b) information and data relating to the digital platform service that is relevant to assessing the benefit that the digital platform service receives from news content of every Australian news business.

(2) The bargaining news business corporation may request the responsible digital platform corporation to give it information and data relating to the digital platform service that is relevant to assessing whether a payment in respect of the digital platform service in relation to the bargaining issues would place an undue burden on the commercial interests of the digital platform service.

(3) The responsible digital platform corporation must comply with a request under subsection (1) or (2).

(4) The responsible digital platform corporation may request the bargaining news business corporation to give it information and data that is relevant to assessing the costs incurred by each represented registered news business in creating covered news content.

(5) The bargaining news business corporation must comply with a request under subsection (4).

(6) A request under subsection (1), (2) or (4) must:

(a) be made in writing; and

(b) if regulations made for the purposes of this paragraph specify other requirements—comply with those requirements.

(7) Nothing in this section requires the giving of information the publication of which would reveal a trade secret.

52ZD Information requests—use of information

(1) Subsection (2) applies if the responsible digital platform corporation gives information or data (or both) to the bargaining news business corporation in order to comply with subsection 52ZC(3).
(2) The bargaining news business corporation must ensure that the information or data (or both) are not used for a purpose other than a purpose in relation to bargaining under this Division or arbitration under Division 7.

(3) Subsection (4) applies if the bargaining news business corporation gives information or data (or both) to the responsible digital platform corporation in order to comply with subsection 52ZC(5).

(4) The responsible digital platform corporation must ensure that the information or data (or both) are not used for a purpose other than a purpose in relation to bargaining under this Division or arbitration under Division 7.

Division 7—Arbitration about remuneration issue

Subdivision A—Preliminary

52ZE Register of bargaining code arbitrators

(1) The ACMA must establish and keep a register of bargaining code arbitrators.

(2) The ACMA must ensure that at least 10 persons are listed on the register.

(3) Each such person must be a person experienced in legal matters, economic matters or industry matters.

Subdivision B—Starting arbitration

52ZF Notification of arbitration

(1) This section applies if:

(a) a notification has been made for the purposes of subsection 52Y(1); and

(b) the digital platform service is a designated digital platform service; and

(c) one of the bargaining issues (the remuneration issue) concerns the remuneration for a registered news business for
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(2) Either of the bargaining parties may give a notice to the Commission that arbitration about the remuneration issue should start, if:

(a) the bargaining parties have attended at least one day of mediation in relation to the remuneration issue; and

(b) either:

(i) the bargaining parties have not reached an agreement about terms for resolving the remuneration issue within 3 months after bargaining starts; or

(ii) the bargaining parties have agreed to arbitration about terms for resolving the remuneration issue no earlier than 10 business days after bargaining starts.

(3) The notice must:

(a) be in writing; and

(b) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.

52ZG  Formation of arbitral panel

(1) This section applies if a notice is given under subsection 52ZF(2).

(2) An arbitral panel is to be formed to arbitrate about the remuneration issue.

(3) The membership of the panel is to be comprised of:

(a) the Chair; and

(b) unless the bargaining parties agree that the sole member of the panel is the Chair—2 other members.

(4) The members of the panel are to be appointed by agreement between the bargaining parties.

(5) The parties may agree to appoint persons who are, or are not, listed on the register of bargaining code arbitrators.
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(6) If the bargaining parties cannot agree on the appointment of one or more of the members, the ACMA must make that appointment or those appointments.

(7) The ACMA may only make an appointment of a person who is listed on the register of bargaining code arbitrators.

52ZH Chair to notify start of arbitration

(1) The Chair must notify the bargaining parties that arbitration about terms for resolving the remuneration issue will start on a specified day that is no later than 5 business days after the notice is given under subsection 52ZF(2).

(2) The notice must:
   (a) be in writing; and
   (b) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.

52ZJ Bargaining parties’ agreement about extra services

(1) The bargaining parties may agree, in writing, that specified services other than the digital platform service should be dealt with in the arbitration.

(2) If the bargaining parties make the agreement before the start of the arbitration, Subdivision C applies as if:
   (a) the remuneration issue related to the digital platform service and the specified services mentioned in subsection (1); and
   (b) references in that Subdivision to the digital platform service included references to those specified services.

Subdivision C—Final offer arbitration

52ZK Application

This Subdivision applies if the Chair has given notice under section 52ZH.

52ZL  Obligation to participate in arbitration in good faith

Each bargaining party must participate in the arbitration in good faith.

52ZM  Mediation during arbitration

The Chair may direct the bargaining parties to attend mediation about the remuneration issue at any time after the arbitration starts. The bargaining parties must comply with the direction.

52ZN  Agreed early termination of arbitration

If, before the panel has made a determination in accordance with section 52ZO(1), the bargaining parties agree that the arbitration should terminate, the arbitration terminates in accordance with that agreement.

52ZO  Final offer arbitration

(1) The panel is to make a determination about the terms for resolving the remuneration issue that:

(a) is in accordance with subsections (5) and (6) (final offer arbitration); and

(b) sets out an amount (the remuneration amount) for remunerating the registered news business for the making available of the registered news business’ covered news content by the digital platform service for one year.

(2) Each of the bargaining parties must:

(a) submit to the panel a final offer for what the remuneration amount should be, no later than 10 business days after the start of arbitration; and

(b) give a copy of the final offer to the other bargaining party on the same day that it submits the final offer to the panel; and

(c) give a copy of the final offer to the Commission on the same day that it submits the final offer to the panel.

(3) The final offers, once submitted, cannot be withdrawn or amended.
(4) The final offers cannot be more than 30 pages in length.

(5) The panel must accept one of the final offers unless the panel considers that each final offer is not in the public interest because it is highly likely to result in serious detriment to:
   (a) the provision of covered news content in Australia; or
   (b) Australian consumers.

(6) If the panel does not accept one of those final offers, it must ascertain the remuneration amount by adjusting one of those offers in a manner that results in that offer being in the public interest.

52ZP Matters to consider in arbitration, etc.

(1) In complying with subsection 52ZO(1), the panel must ensure that the terms for resolving the remuneration issue are compatible with the bargaining parties’ obligations under subsections 52ZT(3) and (4).

(2) In complying with subsection 52ZO(1), the panel must consider the following matters:
   (a) the direct benefit (whether monetary or otherwise) of the registered news business’ covered news content to the digital platform service;
   (b) the indirect benefit (whether monetary or otherwise) of the registered news business’ covered news content to the digital platform service;
   (c) the cost to the registered news business of producing covered news content;
   (d) whether a particular remuneration amount would place an undue burden on the commercial interests of the digital platform service.

(3) In considering the indirect benefit mentioned in paragraph (2)(b), the panel must:
   (a) firstly, consider the total indirect benefit of Australian news to the digital platform service (including increased usage of the digital platform service and public perception benefits arising from the inclusion of Australian news); and
(b) secondly, consider the extent to which that total indirect benefit is attributable to the registered news business’ covered news content.

52ZQ Other requirements for arbitration determination

(1) The panel must make the determination no later than 45 business days after the start of arbitration.

(2) If the Chair is not the sole member of the panel:
   (a) the panel must endeavour to make the determination by unanimous decision of the members of the panel; and
   (b) where a unanimous decision is not possible, the panel must make the determination by majority decision of the members of the panel.

52ZR Submissions of parties

(1) Each bargaining party may give to the panel a submission about the final offer of the other bargaining party, no later than 5 business days after the panel has received both final offers (in accordance with paragraph 52ZO(2)(a)).

(2) The submission can only deal with issues that are dealt with in any material accompanying either of the final offers.

(3) The submission cannot be more than 20 pages in length.

(4) If a bargaining party gives the panel a submission under subsection (1), the bargaining party must give the other bargaining party and the Commission a copy of the submission on the same day that it gives the panel the submission.

52ZS Role of Commission

(1) The Commission may give to the panel a submission about both final offers, no later than 10 business days after the Commission has received both final offers (in accordance with paragraph 52ZO(2)(c)).
(2) A submission of the Commission under subsection (1) may provide additional sources of information to assist the panel to fulfil its obligations in considering the final offers of both parties.

(3) If the Commission gives the panel a submission under subsection (1), it must give the bargaining parties a copy of the submission on the same day that it gives the submission to the panel.

(4) Each bargaining party may give to the panel a submission about the Commission’s submission, no later than 5 business days after the bargaining party has received the Commission’s submission.

(5) The bargaining party’s submission cannot be more than 20 pages in length.

(6) If a bargaining party gives the panel a submission under subsection (4), it must give the other bargaining party and the Commission a copy of the submission on the same day that it gives the submission to the panel.

Subdivision D—Effect of arbitral determination

52ZT Effect and enforcement of determination by panel

(1) This section applies if the panel has made a determination in accordance with section 52ZO(1).

(2) The bargaining parties must comply with the determination.

(3) The bargaining parties must:

   (a) make a written agreement that the responsible digital platform corporation will ensure the payment of the remuneration amount set out in the determination to the registered news business corporation; and

   (b) make that written agreement no later than 30 business days after the panel made the determination.

(4) The written agreement must provide that the payment must be made in a particular way (such as being paid as a lump sum).
Division 8—Enforcement

52ZU Infringement notices

(1) Subject to subsection (2), Division 2A of Part IVB applies in relation to an alleged contravention of a provision of this Part in the same way in which it applies in relation to an alleged contravention of a civil penalty provision of an industry code (within the meaning of that Part).

(2) For the purposes of applying Division 2A of Part IVB in accordance with subsection (1), treat the reference in paragraph 51ACF(a) to 50 penalty units as being a reference to 600 penalty units.

52ZV Joint and several liability for pecuniary liabilities

(1) Subsection (2) applies if:
   (a) a responsible digital platform corporation for a digital platform service is liable to a pecuniary penalty in accordance with section 76 because it contravened a provision of this Part; and
   (b) the responsible digital platform corporation is not the service’s designated digital platform corporation.

(2) The responsible digital platform corporation and the service’s designated digital platform corporation are jointly and severally liable for the pecuniary penalty.

Division 9—Miscellaneous

52ZW Exceptions to Part IV

For the purposes of subsection 51(1), an arrangement between 2 or more registered news business corporations for the purposes of negotiating with a responsible digital platform corporation in relation to covered news content is specified and specifically authorised.
Part 2—Other amendments

Competition and Consumer Act 2010

2 After paragraph 2B(1)(a)
   Insert:
     (aaa) Part IVBA;

3 After paragraph 5(1)(a)
   Insert:
     (aa) Part IVBA;

4 Paragraph 5(1)(f)
   After “(a),”, insert “(aa),”.

5 Paragraph 29(1A)(a)
   After “Part IV,”, insert “Part IVBA.”.

6 After subparagraph 76(1)(a)(i)
   Insert:
     (iaa) a provision of Part IVBA;

7 Paragraph 76(1A)(aa)
   After “or to a provision of”, insert “Part IVBA or of”.

8 After subparagraph 80(1)(a)(i)
   Insert:
     (ia) a provision of Part IVBA;

9 Subsection 155AAA(21) (paragraph (a) of the definition of core statutory provision)
   After “Part IV,”, insert “IVBA.”.