

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

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

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (News Media and*
7 *Digital Platforms Mandatory Bargaining Code) Act 2020.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	

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

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

10 3 Schedules

11 Legislation that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

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Digital platforms and Australian news businesses **Schedule 1**
Main amendments **Part 1**

1 **Schedule 1—Digital platforms and Australian**
2 **news businesses**

3 **Part 1—Main amendments**

4 *Competition and Consumer Act 2010*

5 **1 After Part IVB**

6 Insert:

7 **Part IVBA—Digital platforms**

8 **Division 1—Basic concepts**

9 **52A Definitions**

10 (1) In this Part:

11 *ABC* means the Australian Broadcasting Corporation.

12 *ACMA* means the Australian Communications and Media
13 Authority.

14 *bargaining issues* has the meaning given by section 52ZA.

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

17 *bargaining parties* has the meaning given by section 52ZA.

18 *core news content* means content that:

19 (a) is created by a journalist; and

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

21 (i) are of public significance for Australians; or

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

24 (iii) relate to community and local events.

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Schedule 1 Digital platforms and Australian news businesses

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

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

6 **designated digital platform corporation** means a corporation that

7 is specified as a designated digital platform corporation in a

8 determination under section 52C.

9 **designated digital platform service** means a service that is

10 specified as a designated digital platform service in a determination

11 under section 52C.

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

13 **news business** means:

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

16 **news source** means any of the following, if it produces, and

17 publishes online, news content:

- 18 (a) a newspaper masthead;
- 19 (b) a magazine;
- 20 (c) a television program;
- 21 (d) a radio program;
- 22 (e) a website;
- 23 (f) a program of audio or video content designed to be
- 24 distributed over the internet.

25 **registered news business** means a news business that is registered

26 by the ACMA under subsection 52E.

27 **registered news business corporation**, for a registered news

28 business, means the corporation that is registered under subsection

29 52E as the registered news business corporation for the registered

30 news business.

31 **register of bargaining code arbitrators** means the register

32 established under section 52ZE.

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1 *remuneration issue* has the meaning given by subsection 52ZF(1).

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

4 *responsible digital platform corporation* for a digital platform
5 service is:

- 6 (a) a corporation that:
- 7 (i) is a related body corporate of the service's designated
8 digital platform corporation; and
 - 9 (ii) if the corporation is not incorporated in Australia—is
10 managed in Australia; and
 - 11 (iii) either by itself or together with other corporations,
12 operates or controls the digital platform service in
13 supplying services that are used by Australians; or
- 14 (b) if there is no corporation that satisfies the requirements of
15 paragraph (a)—the service's designated digital platform
16 corporation.

17 *SBS* means the Special Broadcasting Service Corporation.

18 **52B Meaning of *digital platform service***

19 A service is a *digital platform service* of a designated digital
20 platform corporation if:

- 21 (a) the designated digital platform corporation, either by itself or
22 together with one or more related bodies corporate of the
23 corporation, operates or controls the service; or
- 24 (b) a related body corporate of the designated digital platform
25 corporation, either by itself or together with one or more
26 other related bodies corporate of the corporation, operates or
27 controls the service.

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1 **Division 2—Designated digital platform corporation and**
2 **designated digital platform services**

3 **52C Treasurer may make designation determination**

- 4 (1) The Treasurer may, by legislative instrument, make a
5 determination that:
- 6 (a) specifies a corporation that, either by itself or together with
7 other corporations, operates or controls a digital platform, as
8 a *designated digital platform corporation*; and
9 (b) specifies one or more digital platform services of that
10 designated digital platform corporation as *designated digital*
11 *platform services* of the corporation.
- 12 (2) In making the determination, the Treasurer must consider whether
13 there is a significant bargaining imbalance between Australian
14 news providers and the group comprised of the corporation and all
15 of its related bodies corporate.
- 16 (3) The determination is not invalid merely because of a failure by the
17 Treasurer to comply with subsection (2).
- 18 (4) In making the determination, the Treasurer may consider any
19 reports or advice of the Commission.

20 **Division 3—Registered news businesses**

21 **52D Application for registration of news business and news business**
22 **corporation**

- 23 (1) A corporation (the *applicant corporation*) may apply to the
24 ACMA for:
- 25 (a) the registration of a news business; and
26 (b) the registration of the corporation as the registered news
27 business corporation for the news business.
- 28 (2) The application must:
29 (a) be in writing; and

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- 1 (b) set out every news source that comprises the news business;
2 and
3 (c) if regulations made for the purposes of this paragraph specify
4 requirements—meet those requirements.
- 5 (3) The news business set out in the application (as mentioned in
6 paragraph (2)(b)) may be comprised of some or all of the news
7 sources that the applicant corporation, either by itself or together
8 with other corporations, operates or controls.

9 **52E Registration of news business and news business corporation**

- 10 (1) The ACMA must register the news business (and the applicant
11 corporation as the registered news business corporation for the
12 news business) if the ACMA considers that:
13 (a) the application is in accordance with subsection 52D(2); and
14 (b) none of the news sources set out in the application in
15 accordance with paragraph 52D(2)(b) form part of another
16 news business that is a registered news business; and
17 (c) the applicant corporation meets the requirement in section
18 52F (connection between applicant corporation and news
19 business); and
20 (d) the applicant corporation meets the requirement in section
21 52G (the revenue test); and
22 (e) all of the following requirements are met:
23 (i) the requirement in subsection 52H(1) (the content test);
24 (ii) the requirement in subsection 52J(1) (the Australian
25 audience test);
26 (iii) the requirement in subsection 52K(1) (the professional
27 standards test).
- 28 (2) The ACMA must publish details of the registrations on the
29 ACMA's website.
- 30 (3) The ACMA may revoke the registration of a registered news
31 business (and of the registered news business corporation for the
32 registered news business) if the ACMA considers that any of the
33 requirements mentioned in paragraph (1)(c), (d) and (e) are no
34 longer met.

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1 **52F Requirements for connection between applicant corporation**
2 **and news business**

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

6 **52G Revenue test**

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

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

14 **52H Content test**

- 15 (1) For the purposes of subparagraph 52E(1)(e)(i), the requirement is
16 that each news source covered by subsection (2) creates, and
17 publishes online, content that is predominantly core news content.
18 (2) This subsection covers a news source if it is set out in the
19 application (in accordance with paragraph 52D(2)(b)).

20 **52J Australian audience test**

- 21 (1) For the purposes of subparagraph 52E(1)(e)(ii), the requirement is
22 that all the news sources covered by subsection (2) (considered as a
23 whole) operate predominantly in Australia for the dominant
24 purpose of serving Australian audiences.
25 (2) This subsection covers a news source if it is set out in the
26 application (in accordance with paragraph 52D(2)(b)).

27 **52K Professional standards test**

- 28 (1) For the purposes of subparagraph 52E(1)(e)(iii), the requirement is
29 that:
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- 1 (a) every news source covered by subsection (2):
2 (i) is subject to the rules of the Australian Press Council or
3 the Independent Media Council; or
4 (ii) is subject to the rules of the Commercial Television
5 Industry Code of Practice, the Commercial Radio Code
6 of Practice or the Subscription Broadcast Television
7 Codes of Practice; or
8 (iii) is subject to rules substantially equivalent to those
9 mentioned in subparagraph (i) or (ii) regarding internal
10 editorial standards that relate to the provision of quality
11 journalism; and
12 (b) every news source covered by subsection (2) has editorial
13 independence from the subjects of its news coverage.
- 14 (2) This subsection covers a news source if it is set out in the
15 application (in accordance with paragraph 52D(2)(b)).

16 **Division 4—Minimum standards etc.**

17 **Subdivision A—The minimum standards**

18 **52L Obligations in respect of digital platform services individually**

- 19 (1) The provisions of this Subdivision and Subdivision B create
20 obligations in respect of every digital platform service, in respect
21 of each registered news business.
- 22 (2) Those obligations are placed on the responsible digital platform
23 corporation for the digital platform service, in respect of the
24 registered news business corporation for the registered news
25 business.
- 26 (3) If there is more than one responsible digital platform corporation
27 for the digital platform service, those obligations are placed on
28 each of those responsible digital platform corporations separately.
29 If so, references in this Subdivision and Subdivision B to the
30 responsible digital platform corporation for the digital platform
31 service are taken to be references to each responsible digital
32 platform corporation for the digital platform service.

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1 **52M Giving explanations of information etc.**

- 2 (1) The responsible digital platform corporation for the digital
3 platform service must ensure that:
- 4 (a) information covered by subsection (2) is given to the
5 registered news business corporation for the registered news
6 business; and
- 7 (b) the information is given in terms that are readily
8 comprehensible; and
- 9 (c) the information is given to the registered news business
10 corporation no later than 28 days after the day on which the
11 registered news business was registered under section 52E;
12 and
- 13 (d) if regulations made for the purposes of this paragraph specify
14 other requirements for that information—those requirements
15 are satisfied.
- 16 (2) This subsection covers the following information:
- 17 (a) a list and explanation of the data that the digital platform
18 service collects (whether or not it shares the data with the
19 registered news business) about the registered news business’
20 users through their engagement with covered news content
21 made available by the digital platform service;
- 22 (b) a list and explanation of the products and services supplied
23 by the digital platform service that collect data about the
24 registered news business’ users through their engagement
25 with covered news content made available by the digital
26 platform service;
- 27 (c) a list and explanation of the data that the digital platform
28 service currently has a practice of making available to
29 registered news businesses;
- 30 (d) an explanation of how the form of the data mentioned in
31 paragraph (c) differs from the form of the data collected by
32 the digital platform service about users of the digital platform
33 service;
- 34 (e) information about how the registered news business
35 corporation can gain access to the data mentioned in
36 paragraphs (a) and (c).

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- 1 (3) The responsible digital platform corporation for the digital
2 platform service must ensure that:
3 (a) updated information covered by subsection (2) is given
4 annually to the registered news business corporation for the
5 registered news business; and
6 (b) the updated information is given in terms that are readily
7 comprehensible; and
8 (c) the updated information is given to the registered news
9 business corporation no later than 12 months after the later of
10 the following days:
11 (i) the day on which information was given to the
12 registered news business corporation in accordance with
13 subsection (1); or
14 (ii) the most recent day on which updated information was
15 previously given to the registered news business
16 corporation in accordance with this subsection; and
17 (d) if regulations made for the purposes of this paragraph specify
18 other requirements for the updated information—those
19 requirements are satisfied.

20 **52N Algorithmic ranking of covered news content**

- 21 (1) Subsection (2) applies if:
22 (a) changes are planned to be made to an algorithm of the digital
23 platform service; and
24 (b) the changes are likely to have a significant effect on the
25 ranking of the registered news business' covered news
26 content made available by the digital platform service.
- 27 (2) The responsible digital platform corporation for the digital
28 platform service must ensure that:
29 (a) notice of the change is given to the registered news business
30 corporation for the registered news business; and
31 (b) the notice is given:
32 (i) unless subparagraph (ii) applies—at least 28 days before
33 the change is made; or

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- 1 (ii) if the change relates to a matter of urgent public
2 interest—no later than 48 hours after the change is
3 made; and
4 (c) the notice describes the change, and the effect mentioned in
5 paragraph (1)(b), in terms that are readily comprehensible;
6 and
7 (d) the notice describes how the registered news business can
8 minimise negative effects of the change on the ranking of its
9 covered news content made available by the digital platform
10 service.

11 **52O Ranking and display of paywalled content**

- 12 (1) Subsection (2) applies if:
13 (a) changes are planned to be made to an algorithm of the digital
14 platform service; and
15 (b) the changes relate to the registered news business' covered
16 news content; and
17 (c) the changes are specifically designed to have an effect on the
18 ranking or display of content behind a paywall.
- 19 (2) The responsible digital platform corporation for the digital
20 platform service must ensure that:
21 (a) notice of the change is given to the registered news business
22 corporation for the registered news business; and
23 (b) the notice is given at least 28 days before the change is made;
24 and
25 (c) the notice describes the change, and the effect mentioned in
26 paragraph (1)(c), in terms that are readily comprehensible.

27 **52P Display of covered news content**

- 28 (1) Subsection (2) applies if:
29 (a) changes are planned to be made to internal policies and
30 practices of the digital platform service; and
31 (b) the changes are likely to have a significant effect on the
32 display and presentation of the registered news business'

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1 covered news content made available by the digital platform
2 service.

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

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

7 (b) the notice is given:

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

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

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

15 **52Q Display of advertising**

16 (1) Subsection (2) applies if:

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

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

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

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

27 (b) the notice is given:

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

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

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

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1 **52R Facilitating open communication—responsible digital platform**
2 **corporation for digital platform service**

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

- 5 (a) set up a point of contact in Australia for the purpose of this
6 section; and
7 (b) if regulations made for the purposes of this paragraph specify
8 requirements for the point of contact—ensure that the point
9 of contact meets those requirements; and
10 (c) give details of that point of contact to the registered news
11 business corporation; and
12 (d) acknowledge every communication to that point of contact
13 from the registered news business corporation that relates to
14 the registered news business' covered news content made
15 available by the digital platform service; and
16 (e) if regulations made for the purposes of this paragraph specify
17 requirements for the acknowledgement—ensure that the
18 acknowledgement meets those requirements.

19 **52S User comments**

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

- 24 (a) ensure that the registered news business corporation is
25 provided with flexible content moderation tools that allow
26 the registered news business corporation to remove or filter
27 comments on the registered news business' covered news
28 content that:
29 (i) are made using the digital platform service; and
30 (ii) are made on a part of the digital platform service that is
31 set up and able to be edited by the registered news
32 business;
33 (b) ensure that the registered news business corporation can
34 disable the making of such comments;

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- 1 (c) ensure that the registered news business corporation can
2 block the making of such comments:
3 (i) by particular persons; or
4 (ii) in particular circumstances.
- 5 (2) The responsible digital platform corporation for the digital
6 platform service must comply with the request.
- 7 (3) However, the responsible digital platform corporation for the
8 digital platform service need not comply with the request if:
9 (a) regulations made for the purposes of this paragraph specify
10 requirements for such a request; and
11 (b) the request does not meet those requirements.

12 **Subdivision B—Recognition of original news**

13 **52T Recognition of original covered news content**

- 14 (1) The responsible digital platform corporation for the digital
15 platform service must ensure that:
16 (a) a proposal is developed to recognise original covered news
17 content when ranking and displaying news content on the
18 digital platform service; and
19 (b) every registered news business corporation is consulted in
20 developing that proposal; and
21 (c) the proposal is published no later than 6 months after the first
22 registration of a news business under section 52E.
- 23 (2) The responsible digital platform corporation for the digital
24 platform service must ensure that:
25 (a) an annual updated proposal is developed to recognise original
26 covered news content when ranking and displaying news
27 content on the digital platform service; and
28 (b) every registered news business corporation is consulted in
29 developing that updated proposal before it is published; and
30 (c) the updated proposal is published no later than 12 months
31 after the later of:
32 (i) the day on which a proposal was published in
33 accordance with subsection (1); or

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- 1 (ii) the most recent day on which an updated proposal was
2 previously published in accordance with this subsection.

3 **Subdivision C—Obligations on registered news business**
4 **corporations**

5 **52U Facilitating open communication—registered news business**
6 **corporation for registered news business**

7 A registered news business corporation for a registered news
8 business must:

- 9 (a) set up a point of contact for the purpose of this section; and
10 (b) if regulations made for the purposes of this paragraph specify
11 requirements for the point of contact—ensure that the point
12 of contact meets those requirements; and
13 (c) give details of that point of contact to every responsible
14 digital platform corporation for a digital platform service;
15 and
16 (d) acknowledge every communication to that point of contact
17 from a responsible digital platform corporation for a digital
18 platform service that relates to the registered news business'
19 covered news content made available by that digital platform
20 service; and
21 (e) if regulations made for the purposes of this paragraph specify
22 requirements for the acknowledgement—ensure that the
23 acknowledgement meets those requirements.

24 **Subdivision D—Trade secrets**

25 **52V Trade secrets**

26 Nothing in this Division requires the giving of information the
27 publication of which would reveal a trade secret.

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1 **Division 5—Non-discrimination**

2 **52W Digital platform service to be supplied on a non-discriminatory**
3 **basis in relation to registered news businesses’ news**
4 **content**

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

- 9 (a) discriminate between registered news businesses, in relation
10 to the application of this Part; or
11 (b) discriminate between registered news businesses and news
12 businesses that are not registered news businesses, in relation
13 to the application of this Part.

14 **Division 6—Bargaining**

15 **Subdivision A—Starting bargaining**

16 **52X Bargaining news business corporation for a registered news**
17 **business**

- 18 (1) The registered news business corporation for a registered news
19 business is the ***bargaining news business corporation*** for the
20 registered news business.
- 21 (2) Subsection (3) applies if:
22 (a) a registered news business corporation (the ***first corporation***)
23 for a registered news business (the ***first news business***)
24 makes an agreement in writing with another registered news
25 business corporation (the ***second corporation***) for another
26 registered news business; and
27 (b) the agreement provides that the second corporation should be
28 the bargaining news business corporation for the first news
29 business.
- 30 (3) Despite subsection (1), the second corporation is the ***bargaining***
31 ***news business corporation*** for the first news business.
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- 1 (4) To avoid doubt, a registered news business corporation can be the
2 bargaining news business corporation for 2 or more registered
3 news businesses.

4 **52Y Notification of bargaining**

- 5 (1) The bargaining news business corporation for a registered news
6 business may notify a responsible digital platform corporation for a
7 digital platform service that it wishes to bargain over one or more
8 specified issues relating to the registered news business' covered
9 news content made available by the digital platform service.
- 10 (2) If the bargaining news business corporation is the bargaining news
11 business corporation for 2 or more registered news businesses, a
12 notification made for the purposes of subsection (1) may relate to
13 some or all of those registered news businesses.
- 14 (3) If the responsible digital platform corporation is the responsible
15 digital platform corporation for 2 or more digital platform services,
16 a notification made for the purposes of subsection (1) may relate to
17 some or all of those digital platform services. If so, references in
18 this Division and in Division 7 to the digital platform service are
19 taken to include references to all of the digital platform services to
20 which the notification relates.
- 21 (4) A notification made for the purposes of subsection (1) must set out
22 the following matters:
23 (a) the bargaining news business corporation;
24 (b) each registered news business to which the notification
25 relates;
26 (c) the digital platform service;
27 (d) the responsible digital platform corporation for the digital
28 platform service;
29 (e) the specified issues mentioned in subsection (1);
30 (f) if regulations made for the purposes of this paragraph specify
31 other matters—those matters.
- 32 (5) A notification made for the purposes of subsection (1) cannot be
33 later varied to relate to a registered news business that was not set
34 out in the notification.
-

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- 1 (6) If a registered news business to which the notification relates is
2 operated or controlled by the ABC or SBS, the specified issues
3 mentioned in subsection (1) cannot include an issue that concerns
4 the remuneration for the registered news business for the making
5 available of the registered news business' covered news content by
6 the digital platform service.

7 **Subdivision B—Bargaining obligations**

8 **52Z Application of Subdivision**

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

11 **52ZA Bargaining parties, bargaining issues and represented** 12 **registered news businesses**

- 13 (1) The *bargaining parties* are as follows:
14 (a) the bargaining news business corporation that made the
15 notification;
16 (b) the responsible digital platform corporation for the digital
17 platform service to which the notification relates.
- 18 (2) The *bargaining issues* are the specified issues in the notification
19 (as mentioned in paragraph 52Y(4)(e)).
- 20 (3) Each registered news business to which the notification relates is a
21 *represented registered news business*.

22 **52ZB Obligation to negotiate in good faith**

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

25 **52ZC Information requests**

- 26 (1) The bargaining news business corporation may request the
27 responsible digital platform corporation to give it:
28 (a) information and data relating to the digital platform service
29 that is relevant to assessing the benefit that the digital
-

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- 1 platform service receives from covered news content of each
2 represented registered news business; and
3 (b) information and data relating to the digital platform service
4 that is relevant to assessing the benefit that the digital
5 platform service receives from news content of every
6 Australian news business.
- 7 (2) The bargaining news business corporation may request the
8 responsible digital platform corporation to give it information and
9 data relating to the digital platform service that is relevant to
10 assessing whether a payment in respect of the digital platform
11 service in relation to the bargaining issues would place an undue
12 burden on the commercial interests of the digital platform service.
- 13 (3) The responsible digital platform corporation must comply with a
14 request under subsection (1) or (2).
- 15 (4) The responsible digital platform corporation may request the
16 bargaining news business corporation to give it information and
17 data that is relevant to assessing the costs incurred by each
18 represented registered news business in creating covered news
19 content.
- 20 (5) The bargaining news business corporation must comply with a
21 request under subsection (4).
- 22 (6) A request under subsection (1), (2) or (4) must:
23 (a) be made in writing; and
24 (b) if regulations made for the purposes of this paragraph specify
25 other requirements—comply with those requirements.
- 26 (7) Nothing in this section requires the giving of information the
27 publication of which would reveal a trade secret.

28 **52ZD Information requests—use of information**

- 29 (1) Subsection (2) applies if the responsible digital platform
30 corporation gives information or data (or both) to the bargaining
31 news business corporation in order to comply with subsection
32 52ZC(3).

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- 1 (2) The bargaining news business corporation must ensure that the
2 information or data (or both) are not used for a purpose other than
3 a purpose in relation to bargaining under this Division or
4 arbitration under Division 7.
- 5 (3) Subsection (4) applies if the bargaining news business corporation
6 gives information or data (or both) to the responsible digital
7 platform corporation in order to comply with subsection 52ZC(5).
- 8 (4) The responsible digital platform corporation must ensure that the
9 information or data (or both) are not used for a purpose other than
10 a purpose in relation to bargaining under this Division or
11 arbitration under Division 7.

12 **Division 7—Arbitration about remuneration issue**

13 **Subdivision A—Preliminary**

14 **52ZE Register of bargaining code arbitrators**

- 15 (1) The ACMA must establish and keep a register of bargaining code
16 arbitrators.
- 17 (2) The ACMA must ensure that at least 10 persons are listed on the
18 register.
- 19 (3) Each such person must be a person experienced in legal matters,
20 economic matters or industry matters.

21 **Subdivision B—Starting arbitration**

22 **52ZF Notification of arbitration**

- 23 (1) This section applies if:
24 (a) a notification has been made for the purposes of subsection
25 52Y(1); and
26 (b) the digital platform service is a designated digital platform
27 service; and
28 (c) one of the bargaining issues (the *remuneration issue*)
29 concerns the remuneration for a registered news business for

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- 1 the making available of the registered news business’
2 covered news content by the digital platform service.
- 3 (2) Either of the bargaining parties may give a notice to the
4 Commission that arbitration about the remuneration issue should
5 start, if:
6 (a) the bargaining parties have attended at least one day of
7 mediation in relation to the remuneration issue; and
8 (b) either:
9 (i) the bargaining parties have not reached an agreement
10 about terms for resolving the remuneration issue within
11 3 months after bargaining starts; or
12 (ii) the bargaining parties have agreed to arbitration about
13 terms for resolving the remuneration issue no earlier
14 than 10 business days after bargaining starts.
- 15 (3) The notice must:
16 (a) be in writing; and
17 (b) if regulations made for the purposes of this paragraph specify
18 requirements—meet those requirements.

19 **52ZG Formation of arbitral panel**

- 20 (1) This section applies if a notice is given under subsection 52ZF(2).
- 21 (2) An arbitral panel is to be formed to arbitrate about the
22 remuneration issue.
- 23 (3) The membership of the panel is to be comprised of:
24 (a) the Chair; and
25 (b) unless the bargaining parties agree that the sole member of
26 the panel is the Chair—2 other members.
- 27 (4) The members of the panel are to be appointed by agreement
28 between the bargaining parties.
- 29 (5) The parties may agree to appoint persons who are, or are not, listed
30 on the register of bargaining code arbitrators.

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1 (6) If the bargaining parties cannot agree on the appointment of one or
2 more of the members, the ACMA must make that appointment or
3 those appointments.

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

6 **52ZH Chair to notify start of arbitration**

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

11 (2) The notice must:

12 (a) be in writing; and

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

15 **52ZJ Bargaining parties' agreement about extra services**

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

19 (2) If the bargaining parties make the agreement before the start of the
20 arbitration, Subdivision C applies as if:

21 (a) the remuneration issue related to the digital platform service
22 and the specified services mentioned in subsection (1); and

23 (b) references in that Subdivision to the digital platform service
24 included references to those specified services.

25 **Subdivision C—Final offer arbitration**

26 **52ZK Application**

27 This Subdivision applies if the Chair has given notice under section
28 52ZH.

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1 **52ZL Obligation to participate in arbitration in good faith**

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

4 **52ZM Mediation during arbitration**

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

8 **52ZN Agreed early termination of arbitration**

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

13 **52ZO Final offer arbitration**

- 14 (1) The panel is to make a determination about the terms for resolving
15 the remuneration issue that:
- 16 (a) is in accordance with subsections (5) and (6) (final offer
17 arbitration); and
18 (b) sets out an amount (the *remuneration amount*) for
19 remunerating the registered news business for the making
20 available of the registered news business' covered news
21 content by the digital platform service for one year.
- 22 (2) Each of the bargaining parties must:
- 23 (a) submit to the panel a final offer for what the remuneration
24 amount should be, no later than 10 business days after the
25 start of arbitration; and
26 (b) give a copy of the final offer to the other bargaining party on
27 the same day that it submits the final offer to the panel; and
28 (c) give a copy of the final offer to the Commission on the same
29 day that it submits the final offer to the panel.
- 30 (3) The final offers, once submitted, cannot be withdrawn or amended.

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- 1 (4) The final offers cannot be more than 30 pages in length.
- 2 (5) The panel must accept one of the final offers unless the panel
3 considers that each final offer is not in the public interest because it
4 is highly likely to result in serious detriment to:
5 (a) the provision of covered news content in Australia; or
6 (b) Australian consumers.
- 7 (6) If the panel does not accept one of those final offers, it must
8 ascertain the remuneration amount by adjusting one of those offers
9 in a manner that results in that offer being in the public interest.

10 **52ZP Matters to consider in arbitration, etc.**

- 11 (1) In complying with subsection 52ZO(1), the panel must ensure that
12 the terms for resolving the remuneration issue are compatible with
13 the bargaining parties' obligations under subsections 52ZT(3) and
14 (4).
- 15 (2) In complying with subsection 52ZO(1), the panel must consider the
16 following matters:
17 (a) the direct benefit (whether monetary or otherwise) of the
18 registered news business' covered news content to the digital
19 platform service;
20 (b) the indirect benefit (whether monetary or otherwise) of the
21 registered news business' covered news content to the digital
22 platform service;
23 (c) the cost to the registered news business of producing covered
24 news content;
25 (d) whether a particular remuneration amount would place an
26 undue burden on the commercial interests of the digital
27 platform service.
- 28 (3) In considering the indirect benefit mentioned in paragraph (2)(b),
29 the panel must:
30 (a) firstly, consider the total indirect benefit of Australian news
31 to the digital platform service (including increased usage of
32 the digital platform service and public perception benefits
33 arising from the inclusion of Australian news); and

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- 1 (b) secondly, consider the extent to which that total indirect
2 benefit is attributable to the registered news business'
3 covered news content.

4 **52ZQ Other requirements for arbitration determination**

- 5 (1) The panel must make the determination no later than 45 business
6 days after the start of arbitration.
- 7 (2) If the Chair is not the sole member of the panel:
8 (a) the panel must endeavour to make the determination by
9 unanimous decision of the members of the panel; and
10 (b) where a unanimous decision is not possible, the panel must
11 make the determination by majority decision of the members
12 of the panel.

13 **52ZR Submissions of parties**

- 14 (1) Each bargaining party may give to the panel a submission about
15 the final offer of the other bargaining party, no later than 5
16 business days after the panel has received both final offers (in
17 accordance with paragraph 52ZO(2)(a)).
- 18 (2) The submission can only deal with issues that are dealt with in any
19 material accompanying either of the final offers.
- 20 (3) The submission cannot be more than 20 pages in length.
- 21 (4) If a bargaining party gives the panel a submission under subsection
22 (1), the bargaining party must give the other bargaining party and
23 the Commission a copy of the submission on the same day that it
24 gives the panel the submission.

25 **52ZS Role of Commission**

- 26 (1) The Commission may give to the panel a submission about both
27 final offers, no later than 10 business days after the Commission
28 has received both final offers (in accordance with paragraph
29 52ZO(2)(c)).

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- 1 (2) A submission of the Commission under subsection (1) may provide
2 additional sources of information to assist the panel to fulfil its
3 obligations in considering the final offers of both parties.
- 4 (3) If the Commission gives the panel a submission under subsection
5 (1), it must give the bargaining parties a copy of the submission on
6 the same day that it gives the submission to the panel.
- 7 (4) Each bargaining party may give to the panel a submission about
8 the Commission's submission, no later than 5 business days after
9 the bargaining party has received the Commission's submission.
- 10 (5) The bargaining party's submission cannot be more than 20 pages in
11 length.
- 12 (6) If a bargaining party gives the panel a submission under subsection
13 (4), it must give the other bargaining party and the Commission a
14 copy of the submission on the same day that it gives the
15 submission to the panel.

16 **Subdivision D—Effect of arbitral determination**

17 **52ZT Effect and enforcement of determination by panel**

- 18 (1) This section applies if the panel has made a determination in
19 accordance with section 52ZO(1).
- 20 (2) The bargaining parties must comply with the determination.
- 21 (3) The bargaining parties must:
- 22 (a) make a written agreement that the responsible digital
23 platform corporation will ensure the payment of the
24 remuneration amount set out in the determination to the
25 registered news business corporation; and
- 26 (b) make that written agreement no later than 30 business days
27 after the panel made the determination.
- 28 (4) The written agreement must provide that the payment must be
29 made in a particular way (such as being paid as a lump sum).

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1 **Division 8—Enforcement**

2 **52ZU Infringement notices**

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

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

12 **52ZV Joint and several liability for pecuniary liabilities**

13 (1) Subsection (2) applies if:

- 14 (a) a responsible digital platform corporation for a digital
15 platform service is liable to a pecuniary penalty in
16 accordance with section 76 because it contravened a
17 provision of this Part; and
18 (b) the responsible digital platform corporation is not the
19 service's designated digital platform corporation.

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

23 **Division 9—Miscellaneous**

24 **52ZW Exceptions to Part IV**

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

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Other amendments **Part 2**

1 **Part 2—Other amendments**

2 ***Competition and Consumer Act 2010***

3 **2 After paragraph 2B(1)(a)**

4 Insert:
5 (aaa) Part IVBA;

6 **3 After paragraph 5(1)(a)**

7 Insert:
8 (aa) Part IVBA;

9 **4 Paragraph 5(1)(f)**

10 After “(a),”, insert “(aa),”.

11 **5 Paragraph 29(1A)(a)**

12 After “Part IV,”, insert “Part IVBA,”.

13 **6 After subparagraph 76(1)(a)(i)**

14 Insert:
15 (iaa) a provision of Part IVBA;

16 **7 Paragraph 76(1A)(aa)**

17 After “or to a provision of”, insert “Part IVBA or of”.

18 **8 After subparagraph 80(1)(a)(i)**

19 Insert:
20 (ia) a provision of Part IVBA;

21 **9 Subsection 155AAA(21) (paragraph (a) of the definition of**
22 ***core statutory provision*)**

23 After “Part IV,”, insert “IVBA,”.