



COMMUNITY  
BROADCASTING  
ASSOCIATION OF  
AUSTRALIA



# Mandatory news media bargaining code



## Concepts Paper

Joint response to the ACCC

From First Nations Media Australia and  
Community Broadcasting Association of  
Australia (CBAA)

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## Introduction

*Community Broadcasting Association of Australia* (CBAA) is the peak body and national representative organisation for over 450 community radio stations across Australia. Community radio draws its listeners from a wide cross-section of the Australian community. Nationwide, 5.8 million listeners tune in each week – that's 29% of Australians aged 15 years and older. 76% of stations are in regional, rural and remote parts of Australia, and 28% of the population or 1.8 million people in non-metro Australia listen each week. The sector is powered by the efforts and dedication of more than 22,000 volunteers and roughly 700 FTE staff, representing community interests including First Nations, multicultural, youth, seniors, LGBTQIA+, radio reading services for people with a disability, faith-based and diverse arts and music communities. Community broadcasting is Australia's largest independent media sector. It makes an important contribution to the diversity, inclusiveness and social cohesion that characterises Australia's open society.

*First Nations Media Australia* (FNMA) is the peak body for the First Nations media and communications industry. The First Nations radio sector comprises 28 urban and regional radio services, 8 remote media organisations servicing 138 remote communities, collectively reaching nearly 50% of the Aboriginal and Torres Strait Islander population each week. In addition, the sector publishes print media including Koori Mail and the National Indigenous Times, online news sites such as IndigenousX, a regional satellite television service reaching 240,000 remote households (ICTV) and a free to air national TV service (NITV). The industry has a strong web presence with First Nations broadcasters active on social media. Plus indigiTUBE, a dedicated online platform showcasing aggregated content complimented by an app, each of which streams 25 radio services. These channels offer a wide range of news and current affairs reporting from a First Nations perspective, in over 20 languages nationally, including the first language of many people in remote communities. They are the primary and often only source of information for much of the Aboriginal and Torres Strait Islander population.



## Approach

The CBAA and FNMA each represent not-for-profit media organisations who contribute a diverse array of reporting to the news landscape. As there is significant correlation in the interests of our respective memberships, the two organisations have chosen to submit a joint response to the ACCC's Concept Paper on a potential mandatory news media bargaining code. The CBAA submitted a response to the Government's consultation regarding the Final Report of the ACCC's Digital Platforms Inquiry in [September 2019](#). We appreciate the opportunity for ongoing input to the ACCC's consultation processes.

Many of the issues discussed in the Concept Paper pertain exclusively to commercial news outlets. As such, we have not attempted to address each consultation question outlined in the Concept Paper. Instead, we have highlighted a number of matters for your consideration.

## Definitional issues

### **Access**

News plays a vital role in informing the Australian public and building resilient communities. Free access to information is not only a consumer preference, but necessary for a functioning Australian democracy. FNMA and the CBAA urge the ACCC to ensure this inherent value is at the forefront of discussions with online platforms and in the development of a Mandatory Bargaining Code.

Access to a diversity of perspectives enables individuals to draw their own conclusions and take associated actions. Any bargaining code developed should uphold access to a diversity of news sources and not further consolidate news content for consumers.

### **Definition of news**

The CBAA and FNMA support a broad definition of journalism (or news) that focuses on protecting the function of journalism and news creation. As defined in 122.5 of the Criminal Code, a person is protected if they have "dealt with the information in their capacity as a 'person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media', and have reasonably believed that engaging in the conduct was in the public interest".

The statute does not define journalism; it doesn't even use the term. It focuses on what the person is doing, and so it implies that anybody who meets the standards set out in the law is able to use the defence. This is broadly an effective definition of someone carrying out journalistic or news-making activities, and would capture the work that volunteers, trainees, student journalists and not-for-profit journalists/news makers carry out in the community broadcasting and First Nations media industries. Our sectors are governed by professional and ethical standards. For example, newsmakers that make content for a licensed community radio broadcaster must abide by the Community Radio Broadcasting Codes of Practice, registered with the Australian Communications Media Authority (ACMA). This is a relevant media industry code and should be included as part of the ACCC's 'news content' definition of journalistic practices.

Not-for-profit journalism contributes to the diversity of views represented in the Australian media landscape. Volunteer broadcasters and reporters produce news content daily but would not be considered "professional journalists", and often as volunteers, don't have the means to become members of, or fit into membership categories for, the MEAA or other relevant standards-setting bodies. However licensed community broadcasters must abide by the sector's Codes as regulated by the ACMA, which ensures journalistic compliance and rigour.

### ***Determining news content***

The ACCC notes the potential for defining 'hard' news as distinct from entertainment or sports content. There can be significant grey areas between these types of content which poses difficulties in developing guidelines which defines news by its content type.

Similarly, the length and format of news content poses a range of definitional issues. Community broadcasting and First Nations media provides a space to examine news stories from differing perspectives, ensuring a platform for in-depth discussion and analysis in a manner different to commercial media outlets operating for profit objectives. Discussion of prioritising news 'snippets' and 'scraping' news content raises concerns about the quality of news content available publicly and the capacity for citizens to meaningfully engage with issues and events.

The CBAA and FNMA suggest that news cannot be effectively defined by its topic, its length or by the individual creating the report ("professional" or otherwise). Consequently, we suggest the ACCC prioritise the original publisher of the news story as the primary mechanism for defining news content. We support the prioritising of original news content as described in the Concept Paper.

### **Cost**

There are costs incurred in not-for-profit news production which for community and First Nations media organisations are currently met through a hybrid of government and self-generated revenue sources.

While some commercial news outlets have chosen to put paywalls around news content, to date, Government investment has enabled the ABC and SBS services to remain free for anyone with access to digital technologies. From a social equity standpoint, it is essential that free access to news be maintained for consumers through any distribution format. This also aligns with long-standing Government public policy objectives, that diverse media alternatives remain freely accessible by Australians via a multitude of easily-accessible platforms.

### **Bargaining framework**

Community broadcasters and First Nations media organisations are likely to face significant capacity challenges in negotiating content-sharing arrangements with large corporations. The ACCC notes small to medium media organisations have expressed difficulty in even contacting the Australian offices for Google and Facebook, much less eliciting a response. While the peak bodies such as CBAA and FNMA can offer guidance and support, the limited number of operational staff at community licensed media organisations will constrain the amount of time available to pursue rate negotiations on a case-by-case basis for each organisation. For our sectors, the ability to negotiate collectively with the digital platforms or as part of a sector-wide licensing arrangement will be essential.

However we recognise that a 'one-size-fits-all' approach is not appropriate, and the CBAA and FNMA support and value the autonomy of individual media organisations to pursue contractual arrangements appropriate to their own circumstances. We support a Code that adopts a hybrid approach that permits a media organisation to negotiate directly with the digital platforms if it so chooses, while also providing media organisations with the ability to negotiate collectively if

more appropriate. Our sector has experience with collective licensing models, and we would welcome the opportunity to input further into the ACCC's deliberations and investigations regarding the bargaining framework.

We support the ACCC's assertion that the implementation of bargaining frameworks should not unduly advantage larger news businesses at the expense of smaller news media businesses, including regional and local news outlets. We encourage you to also consider the not-for-profit news sector, who also must fund news production.

### Potential value

There is some potential for not-for-profit media organisations to gain value from:

- Advance notification of changes to algorithms; and
- Audience data. Not-for-profit media organisations have limited budgets for gathering audience information.

However, we do not believe that audience data alone should necessarily determine news production. We caution the ACCC against overly-focusing on data as a source of value in relation to news content.

The not-for-profit media sector offers localism in news production in an environment where other news outlets are withdrawing from regional and remote regions. Government identifies the value of local and community newsrooms, having provided initial investment in community newsrooms to maintain skills and workforce opportunities in regional and remote locations. A mandatory news media bargaining code should align with local journalism policy objectives and seek to support localised news production in addition to aggregated news services.

### Further discussions

The CBAA and FNMA acknowledge the ACCC's intent to address the full range of 'news media businesses' within the Concept Paper. We note that while the ABC and SBS are included as alternative business models, the community broadcasting and First Nations media sectors are not referenced in the paper. While the community media sector may not be a significant commercial driver in the Australian news landscape, it is a significant contributor to the diversity of news content available to the Australian public. As such, FNMA and the CBAA are committed to working closely with the ACCC regarding not-for-profit news's

position within mandatory bargaining codes. As peak bodies for the sectors, and active participants in research, policy and planning in broadcasting reform, we are well placed to provide further advice.



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