



Media, Entertainment and Arts Alliance submission to the
Australian Competition and Consumer Commission's
DIGITAL PLATFORMS INQUIRY

April 2018

ACCC Digital Platforms Inquiry - 2018

INTRODUCTION

MEAA welcomes the opportunity to make a submission to this important Inquiry.

MEAA note the inquiry's terms of reference:

- i. the extent to which platform service providers are exercising market power in commercial dealings with the creators of journalistic content and advertisers;
- ii. the impact of platform service providers on the level of choice and quality of news and journalistic content to consumers;
- iii. the impact of platform service providers on media and advertising markets;
- iv. the impact of longer-term trends, including innovation and technological change, on competition in media and advertising markets; and
- v. the impact of information asymmetry between platform service providers, advertisers and consumers and the effect on competition in media and advertising markets.

MEAA also acknowledge the ACCC's Issues Paper and the questions therein. We have sought to embed as many responses to those questions as possible in our submission.

This inquiry follows the important work performed by the Public Interest Journalism Inquiry, whose recommendations are appended to this submission. It is from the position of ensuring that public interest journalism and the organisations that fund it (companies and public corporations) are sustained that MEAA engages in this process.

MEAA believes that effective standards should be established for digital platforms, especially those of scale. We support the following seven (7) measures:

MEAA Positions

1. that digital platforms of scale be classified as media companies for regulatory purposes
2. in the absence of Australian publishers and content creators being reasonably compensated for use of media content, an access-per-user fee or percentage of revenue charge be levied on digital platforms of scale, such funding to be retained for a contestable *Public Interest Journalism Fund*
3. that an effective 'good faith' requirement be included in collective bargaining authorisations under section 88 of the Competition and Consumer Act to enable Australian media companies to engage in mutually satisfactory commercial negotiations
4. inserting a mandatory 'public interest' test into section 50 of the Competition and Consumer Act – mergers and acquisitions
5. fast-tracking the Productivity Commission's recommendations for a new Comprehensive Right for consumers to control their data and creation of a new Data Sharing and Release Act
6. that the Government consider increasing maximum penalties for 'mass' privacy/data breaches
7. that consumers be provided with plain language information about the extent of algorithm use and advised of safeguards

The European Commission's Communication on Online Platforms and the Digital Single Market¹ from May 2015 observed, inter alia, that online platforms:

- have the ability to create and shape new markets, to challenge traditional ones, and to organise new forms of participation or conducting business based on collecting, processing and editing large amounts of data;
- benefit from network effects, where, broadly speaking, the value of the services increases with the number of users; and
- play a key role in digital value creation, notably by capturing significant value (including through data accumulation), facilitating new business ventures and creating new strategic dependencies.

From MEAA members' perspective, digital platforms have enabled the spread of their work to a wider audience and greater communication between journalist and media consumer. It is also increasingly the case that journalists are required to upload content onto social media sites to capture clicks and create an online presence.

Google and Facebook have also become a channel for news media content through which Australian media companies have seen their business models rendered obsolete. The fundamental cause of this obsolescence has been the free-fall in advertising revenues once relied upon by media companies to produce quality journalism across the breadth of public policy, business, justice, international affairs, sport and matters of general interest.

It is claimed that in the US, Google and Facebook collectively contribute about 70 per cent of publishers' referral traffic.² Facebook's *News Feed* is said to be the largest source of traffic for news and media sites, representing 43 per cent of their referrals. Only a small fraction of referrals translate into publishing revenue.

The head of News Corp in Australia, Michael Miller, has remarked that 'in the media, Google is destroying the journalism model. Its dominance of search leaves publishers no choice other than to be on Google. It has the distribution model, and journalism needs to be discoverable.

News media companies are now strategically dependent on digital platforms to drive traffic to media websites (and associated platforms), yet the relationship is severely imbalanced. Digital platforms deny that they are media companies, yet have managed to monetise the carriage of news items in ways that have created despair across the Australian media sector.

The authors of the *Shattered Mirror* report dealt with this phenomenon in the Canadian context. They commented that:

'the digital revolution has made for a more open and diverse news ecosystem – and a meaner and less trustworthy one. It has also upended the model of journalistic boots on the ground

¹ *Communication on Online Platforms and the Digital Single Market – Opportunities and Challenges in Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, European Union Commission, 25 May 2016, page 2

² *Media companies are speaking up against the dominance of Facebook and Google*, Luica Moses, Digiday, 8 March 2018

*backed up by a second platoon in the office upholding such hallowed standards as verification and balance’.*³

In Australia, the consequences have been the same. Our media sector has lost approximately 3000 journalist positions since the growth of digital platforms escalated about ten years ago.⁴ IBIS World reported that Australian newspapers had 23,472 employees in 2010-11. Although IBIS World anticipated a fall to 16,373 in 2016-17, the true figure was 14,678 by June 2017.⁵ We consider these figures conservative.

Fairfax incurred Redundancy Costs of \$490 million between 2007 and 2017. In 2007, the company engaged 7,126 full-time and 1,643 part-time and casual Australian employees. In 2017, the number of full-time Australian employees was 3,917 full-time and 610 part-time/casual staff. In all, 3209 full-time jobs and 1033 part-time and casual media jobs have been lost over 10 years – or 55 per cent and 37 per cent respectively.⁶

News Corp incurred restructuring costs in its newspaper businesses totaling almost \$900 million from 2009 to 2017, principally in the UK and Australia. MEAA estimate that approximately 1400 positions have been shed at News Corp’s Australian titles since the Global Financial Crisis (GFC).⁷

Unlike the well-documented slide in the Australian manufacturing sector, consumers cannot continue to purchase equivalent (or substitute) products to those displaced by the decline of the Australian media sector. A loss of local news from regional Australia will not be carried by an international publisher.

Many of the job losses at Australian media companies have come through redundancies, which appeals to more senior journalists who have worked with an employer for many years. The *New Beats* survey found the average of respondent redundant journalists was just over 49 years, who had worked in journalism for an average of almost 26 years.⁸

This loss of positions and knowledge has had quantitative and qualitative consequences. Newspaper content, whether the number of pages and volume of journalistic content contained therein, is significantly down on five and ten years ago – a product of the inability of proprietors to cover all areas of consumer interest.

The fragmentation of the sector has also pushed an increasing number of journalists into freelance work, which is far less secure and where earnings troughs can be more common than peaks.

³ *The Shattered Mirror: News, Democracy and Trust in the Digital Age*, Public Policy Forum, January 2017, page 4

⁴ We note that the Global Financial Crisis contributed to the initial wave of job losses and masthead restructuring

⁵ *‘Paper Jam’: Revenue Declines as consumers shift to online news platforms*, IBIS World, Newspaper Publishing Market Research Report, NZSIC J5411, December 2015

⁶ figures refer to all Fairfax staff and are not restricted to journalists/editorial staff

⁷ Figures are not restricted to journalists/editorial staff

⁸ *Working for less: the aftermath for journalists made redundant in Australia between 2012 and 2014*, Lawrie Zion, Andrew Dodd, Merryn Sherwood, Penny O’Donnell, Timothy Marjoribanks & Matthew Ricketson, June 2016 - see: <https://doi.org/10.1080/22041451.2016.1185924>

The decline of news content providers, particularly those associated with print newspapers and journals, is of course a worldwide phenomenon. In the US, the Pew Research Center stated that 41,400 people worked as reporters or editors in the newspaper industry in 2015, down 37% from 2004.⁹

To date, governments worldwide have been unable or unwilling when it comes to addressing the sheer power of the major internet platform companies. As each year passes, these entities grow in scale and pervasiveness, with escalating user numbers and the capture and analysis of user data directed at ensuring digital platforms' enduring prosperity and competitive advantages.

MEAA believes that rampant revenue displacement from media companies to digital providers should lead to an acknowledgement that digital platforms are modern news companies – discussed further on in this submission; it follows that they – like the companies and individuals that journalism - must pay for the news and current affairs content.

ABOUT GOOGLE AND FACEBOOK

The bases of Google and Facebook's revenue and profits are data collection, advertising and carriage of newsworthy and other materials.

Google Statistics

Google makes the vast majority of its money from ads shown as part of search results. Paid search focuses on the targeting of keywords. It achieves this through an auction-based advertising program – where advertisers bid for keywords relevant to their business, hoping that their ads will be displayed alongside query search results. The price paid for keywords is determined by bidding activity for the keyword(s) in question. The cost per click can vary substantially – from almost zero to \$100¹⁰ [or more].

Each time the user clicks on an ad, the advertiser is charged a certain amount of money,¹¹ thereby enabling companies 'to deliver relevant ads targeted to search queries or web content to potential customers across Google sites and through the Google network'.¹²

In 2017, Google's revenue amounted to \$109.65 billion US dollars. Of this amount, Google's ad revenue was \$95.4 billion US dollars (or 87 per cent). The *Australian Financial Review* reported in November 2017 that Alphabet (Google's trading name) had released results 'showing it is on track to own at least half of the \$200 billion in digital advertising in the world in the next two years. Its video subsidiary, YouTube, now has 1.5 billion users and it is likely to win more market share from old media'.¹³

Among the leading search engines, the worldwide market share of Google in January 2017 was 89.06 percent. The share of the Australian search market is much the same. The company now has seven services which have reached 1 billion users: Google Maps, YouTube, Chrome, Gmail, Search, and Google Play. People downloaded 82 billion apps during 2016 and also tune into YouTube to watch over 1 billion hours of video each day.

⁹ *Newspaper Fact Sheet*, Pew Research Center, June 1, 2017

¹⁰ *How Does Google Make Money?* Mahesh Moran, 1 December 2014

¹¹ *Facebook ads vs. Google AdWords: Which Should You Be Using?* See: <https://www.wordstream.com/facebook-vs-google>

¹² *How Does Google Make Money?* Mahesh Moran, 1 December 2014

¹³ *Google makes peace with its most vehement critic*, Tony Boyd, 10 November 2017, AFR

Facebook Statistics

With more than one-fifth of the world's population as users, Facebook is said to have no rival when it comes to the enormity of its audience'.¹⁴ Unlike paid search, which helps businesses find new customers via keywords, 'paid social' helps users find businesses based on the things they're interested in and the ways they behave online.¹⁵

Advertisers can serve up custom ads to Facebook users from specific income groups or regions. They can also target users based on other categories, such as sexual orientation, religion or political affiliation. Facebook has developed a broad variety of ad products for different stages of the branding lifecycle.¹⁶

Facebook's global revenue grew from \$7.87 billion in 2013 to \$40.7 billion US dollars in 2017, with \$39.9 billion of this amount generated from advertising.¹⁷

Facebook has about 2.13 billion monthly users, with daily active users numbering 1.4 billion in December of 2017, up from 1.23 billion in December of 2016. In Australia, Facebook had 15 million monthly active Australian users (6 in 10 Australians), with half this number using Facebook on a daily basis.¹⁸

In April 2018, Facebook's market capitalisation stood at \$485 billion, while Google's parent company, Alphabet, had a market capitalisation of \$709.38B U.S. dollars. In contrast, Fairfax Media has a market cap of \$1.52 billion. The Seven Network has a market cap of \$787 million.¹⁹

Compare the reach of the world's major digital platforms to print/digital circulations and subscriptions of major newspaper companies over time.

Print:	<i>SMH</i>	<i>Herald Sun</i>	<i>The Australian</i>
2002 circulation	228,800	548,764	130,378
2017 circulation	88,634	303,140	94,448
+/-	- 61%	- 45%	- 27.5%

The most recent reliable data with respect to digital descriptions is from 2016.²⁰ The corresponding figures for the above titles were:

Digital:	<i>SMH</i>	<i>Herald Sun</i>	<i>The Australian</i>
2016	134,934 ²¹	75,067 ²²	80,722 ²³

¹⁴ Facebook ads vs. Google AdWords: Which Should You Be Using? See: <https://www.wordstream.com/facebook-vs-google>

¹⁵ ibid

¹⁶ [How Does Facebook Make Money? | Investopedia https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp#ixzz5Bl2JZOZ7](https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp#ixzz5Bl2JZOZ7)

¹⁷ Source: Statista - The Statistics Portal. See: statista.com

¹⁸ Social Media Statistics Australia, January 2018

¹⁹ Source: ASX, accessed 5 April 2018

²⁰ Most newspapers no longer submit data to the Audit Bureau of Circulation

²¹ Fairfax subscriptions are no longer audited

²² 2017 figure was 77,213

²³ 2017 figure was 85,349

ADVERTISING

The business model of media companies throughout the world was relatively simple prior to the digital revolution. It was (and remains) that 'publishers create and aggregate information and present it to users in return for their attention, which they sell to advertisers'.²⁴

As is widely known, Newspaper publishers have historically competed with television and radio stations and magazines for advertising revenues; but as the *State of Newspaper Industry Report* from 2013 observed:

'The growth of online advertising has impacted most on newspapers, magazines and printed classified directories with each of those media suffering significant loss of market share, particularly after 2005. Historically, newspapers represented the largest (in terms of revenue) sector of the advertising market. However, as a result of recent declines in newspaper advertising revenues, the sector lost its primacy to television after 2009. It dropped further down the ranking in 2012 when it was relegated to third place by the continuing surge of online advertising, which appears destined to become the largest sector of the advertising market in the not too distant future'.²⁵

According to pwc, in 2016:

- free-to-air television advertising totaled \$3.7 billion
- newspaper advertising (print and digital) totaled \$2.28 billion
- internet advertising totaled \$7.09 billion

Australian media companies now compete against digital platforms with unlimited advertising space. As the Australian publisher, Eric Beecher, noted: digital platforms constitute 'the first advertising medium in history that has unlimited advertising inventory'. Ad payments in the past were based on the scarcity of space, 'whereas now there is the opposite of scarcity'.²⁶

By combining lower ad costs, unrivalled consumer reach and the technical capacity to segment audiences and target advertising, digital platforms have seen newspapers lose much of their drawing power as vehicles for advertising.

The ACCC's *Issues Paper* identifies how, according to ACMA, the supply of digital advertising services as online ad spend went from 15% of the Australian market in 2009 to 48% in 2016. Trend statistics indicate that this move to online advertising will continue to surge, with pwc reporting that social media advertising has been growing by 24% per annum.²⁷

²⁴ *Google and Facebook can't help publishers because they're built to defeat publishers*, Peter Kafka, Recode, 20 March 2018.

²⁵ *State of the Newspaper Industry in Australia, 2013*, Franco Papandrea, the News and Media Research Centre, University of Canberra, 2013, page 9-10

²⁶ *Losing money and losing trust: The Crisis of modern journalism*, Antony Funnell, ABC Radio National, 4 August 2016

²⁷ *Australian Entertainment and Media Outlook*, pwc, 2016

In its 2017 Media and Entertainment Outlook²⁸, pwc reported that internet advertising across all categories is expected to move from \$7.09 billion in 2016 to \$10.016 billion in 2021, with mobile advertising rising from 32% of total spend in 2016 to approximately 70% in 2021. Online video advertising is expected to increase from \$766 million in 2016 to \$2.227 billion in 2021.

Across newspapers, print newspaper advertising is expected to fall from \$1.8 billion in 2016 to \$830 million in 2021, while digital newspaper advertising is expected to increase from a total of \$473 million in 2016 to \$602 million in 2021.²⁹ We can see from these figures that the total ad revenues received by newspaper companies will continue to fall at a substantial rate compared to prior earnings.

As to market share of advertising dollars, Morgan Stanley's Australian office stated that Facebook and Google are 'taking all the ad market growth, and then some.' They estimated that in 2016, Google and Facebook 'collectively extract[ed] \$4bn to \$5bn worth of ad revenue – representing 35-40% of total ad revenues.'¹ In the US in 2016, it was reported that Facebook and Google accounted for 99% of all the growth in digital advertising'.³⁰

Ad dollars are also fast centering on mobile devices. Nearly \$50 billion of Google's net digital ad revenue will come from mobile in 2017, up from \$38 billion in 2016.³¹ Facebook's mobile advertising revenue accounts for 77 per cent of the social network's total advertising revenue, with mobile ad revenues projected to reach \$60.68 billion U.S. dollars by 2021.

The market dominance of the two US tech giants Google and Facebook is such that they constitute an effective duopoly on online Australian media. In other words, these two companies 'now control the majority of the eyeballs of ordinary Australians'.³²

Media Companies?

MEAA note the ACCC Chairman's media statement from December 2017 that Google and Facebook et al 'are essentially advertising companies. People think of them differently, but there's no question they're advertising companies, they're trying to tailor their product to advertisers'.³³ The Chairman was presumably offering his opinion on whether the major digital platforms should still be considered technology companies *only*.

MEAA believe that Google and Facebook's hold of most of the world's online audience and their ability to monetise media content at the expense of organisations and individuals that select, research, analyse, verify, write and publish content, makes them media companies. Alternatively, there is no credible barrier to describing the major digital platforms as technology, advertising *and* media companies.

²⁸ *Australian Entertainment and Media Outlook*, pwc, 2017

²⁹ Consumer magazine advertising is also consistently falling – from \$445 million in 2016 to a projected \$300 million in 2021, with digital advertising projected to be about one-third of the total amount.

³⁰ Citing statistics from the Internet Advertising Bureau, *Facebook and the rest of Big Tech are now Big Media, and it's time we start treating them that way*, Steve Kovach, Business Insider, 15 October 2017

³¹ EMarketer, cited in: *Google leads the world in digital and mobile ad revenue, Facebook is a distant second*, Rani Molla, Recode, 24 July 2017.

³² *We should levy Facebook and Google to fund journalism – here's how*, Ben Eltham, The Conversation, May 19, 2017

³³ *There's no question they're advertising companies, ACCC hones in on Google and Facebook*, Max Mason, Australian Financial Review, 4 December 2017.

Dr David Levy, the director of the Reuters Institute for the Study of Journalism at Oxford University says that social media is rapidly becoming the main way people access information. A 2016 Institute study of more than 50,000 people in 26 countries found that 51% of respondents using social media to access news content.³⁴

As Justin Schlossberg wrote prominently in *ResPublica*: 'Although Google, for instance, does not profit directly from news content, it forms an integral part of its user experience and volume base, and thus, contributes substantially to the company's bottom line'.³⁵

The Pew Centre has commented that 'Facebook's news feed has become what the front page of the newspaper was for older generations of people; at least 66% of the social networks 2 billion users rely on it as a news source. Meanwhile, consumers turn to Twitter for breaking news and they search Google for news updates'.³⁶ The Pew Centre also stated that, 'for the first time in the Center's surveys, more than half (55%) of Americans aged 50 or older report getting news on social media sites. That is 10 percentage points higher than the 45% who said so in 2016'.³⁷

Business Insider has written that 'Google not only operates Google News and touts live news events on YouTube, it's even altered its core search feature to show links to relevant articles above search results when users search for newsworthy items. And Twitter has launched numerous features, including *What's Happening Now* page to highlight news stories and information'.³⁸ *Business Insider* also claimed that Facebook purposely designed its algorithms to customize users' news feeds to show them the stories and other information they're most likely to engage with.

MEAA agree with the observation that:

'social networks have become the primary distribution channel for news. News organisations have become wholly dependent on Facebook and Google in particular for online distribution, and for whatever revenue they still get, but the interests of those two companies do not align with those of journalists and the public'.³⁹

Along with losing vast numbers of subscribers and readers, Professor Richard Sambrook, former head of global news at the BBC, has remarked that news content makers are losing 'valuable customer data'.⁴⁰ In

³⁴ *Losing money and losing trust: The Crisis of modern journalism*, Antony Funnell, ABC Radio National, 4 August 2016

³⁵ "The Mission of Media in the Age of Monopoly", Dr Justin Schlosberg, *ResPublica*, May 2016, <http://www.respublica.org.uk/our-work/publications/mission-media-age-monopoly/>

³⁶ *News Use Across Social Media Platforms 2017*, [Elisa Shearer](#) and [Jeffrey Gottfried](#), Pew Research Centre – Journalism and Media, 7 September 2017

³⁷ Those under 50 remain more likely than others to get news from these sites (78% do, unchanged from 2016).

³⁸ *Facebook and the rest of Big Tech are now Big Media, and it's time we start treating them that way*, Steve Kovach, *Business Insider*, 15 October 2017

³⁹ In: *Do Facebook and Google have control of their algorithms anymore? A sobering assessment and warning*, Melody Kramer, POYNTER, 14 November 2017

⁴⁰ *Losing money and losing trust: The Crisis of modern journalism*, Antony Funnell, ABC Radio National, 4 August 2016

addition, 'less than half the people say they notice the news brand routinely when they consume it via social media or aggregator'.⁴¹

Digital platforms have nonetheless vigorously resisted the notion that they are media companies, mostly on the basis that they do not employ journalists.

Martin Sorrell, the CEO of WPP, the world's largest advertising and marketing company, said last year that: 'The fundamental point is the acceptance by Google and Facebook that they are media companies and not technology companies and that they have the same responsibility [as media companies]'.⁴² Sorrell added that the internet giants need to accept their role as media companies, and that means having better control of the content that appears on their platforms.⁴³

ALGORITHMS

There is now greater discussion and consideration of digital platforms' levels of reliance and control of algorithms and whether this has a damaging effect on the nature of news consumption, including the impact of fake news.

With respect to Facebook, The New York Times said:

'Facebook promotes video, plays publisher-generated content up or down in relation to user-generated content, and tinkers continually with the algorithm that determines what appears on News Feed; it does this not out of any inherent high or low-mindedness, but in an effort to harvest an ever greater quantity of our time. If the written word happens to fall out of favour, or if journalism becomes economically unworkable as a consequence, these results, so far as Facebook is concerned, are unintentional. They're merely collateral damage from the relentless expansion of the most powerful attention-capture machine ever built'.⁴⁴

Facebook's algorithms are said to be the most complicated of all social networks. Its algorithms sort thousands of pieces of content to give priority to content deemed by the algorithm to be of the most relevance to the user. It is also said that Facebook is: 'not just monitoring how long you spend looking at each post; it's also carefully evaluating what we actually want to see, focusing on us, and not just on the underlying math'.⁴⁵ Prominent among Facebook's algorithmic variables are posts with Likes, comments and shares and posts with a high volume of likes, comments or shares in a short time.⁴⁶

As a result, algorithms can lead to the generation of specific types of content. 'So when Facebook indicates that it favours a new form of content, publishers start making a lot of it'.⁴⁷ We submit that this dependence on (or capitulation to) user profiling – diverts consumer attention from alternative content, damages the media ecosystem and limits exposure to varying viewpoints.

⁴¹ *ibid*

⁴² *ibid*

⁴³ *ibid*

⁴⁴ *They've Got You, Wherever You Are*, Jacob Weisberg, New York Times, 27 October 2016

⁴⁵ Attributed to Will Oremus, Slate Magazine, *What's the Deal with Algorithms*, 22 February 2016

⁴⁶ *Decoding the Facebook Algorithm: A Fully Up-to-Date List of the Algorithm Factors and Changes*, Alfred Lua, bufferSocial - See: <https://medium.com/social-media-tips/decoding-the-facebook-algorithm-e106dc2f7d15>

⁴⁷ *They've Got You, Wherever You Are*, Jacob Weisberg, New York Times, 27 October 2016

MEAA believes that the use of algorithms is compromising media diversity. Compartmentalising media consumers instead of valuing their potential breadth of interests is inherently harmful. The result of this mechanized ‘tailoring’ of content to a user can lead to what has been labelled a ‘hivelike’ way of living.⁴⁸ In a democracy, the risks of confining sources of news information should be clear.

As Cathy O’Neill⁴⁹ commented last year, ‘people are often too willing to trust in mathematical models because they believe it will remove human bias. Algorithms replace human processes, but they’re not held to the same standards’. Ms O’Neill added that ‘the companies that develop and apply machine learning systems and government regulators, show little interest in monitoring and limiting algorithmic bias’ and ‘aren’t transparent about how they operate’.⁵⁰

This is an area where publishers and editorial staff (i.e. humans) can clearly lay claim to having a better sense of public interest.

There is also the alarming proposition that the major digital platforms no longer control their algorithms. A technology commentator, Zeynep Tufekci, remarked that:

*‘We no longer really understand how these complex algorithms work. We don’t understand how they’re doing this categorization. It’s giant matrices, thousands of rows and columns, maybe millions of rows and columns,, and not the programmers [or] anybody who looks at it, even if you have all the data, understands anymore how exactly it’s operating any more than you’d know what I was thinking right now if you were shown a cross-section of my brain. It’s like we’re not programming anymore, we’re growing intelligence that we don’t truly understand’.*⁵¹

The remaining key manifestation of errant algorithms is the critical inability of algorithms to discern fake content from verified news information. Whether this is due to inadequate human attention and/or a misplaced reliance on technology, it is damaging. It creates confusion and fractures public trust with all news media, not just the disseminators.

As the British News Media Association said in a statement to the House of Commons in early 2017:

*‘Fake news is a growing cause for concern around the world, with implications for an informed electorate and democracy itself’ and many of the sites and publishers who produce fake news rely on ‘gaming the algorithms of Facebook, Google and other networks and platforms used to connect their users with news stories’.*⁵²

MEAA support the European Union Commission’s belief that:

‘Greater transparency is needed for users to understand how the information presented to them is filtered, shaped or personalized, especially when this information forms the basis of purchasing

⁴⁸ Source: Slate Magazine.

⁴⁹ Ms O’Neill is the author of *Weapons of Math Destruction*, which highlights the risks of algorithmic bias.

⁵⁰ *Biased Algorithms are everywhere, and no-one seems to care – the big companies developing them show no interest in fixing the problem*, Will Knight, MIT Technology Review, 12 July 2017.

⁵¹ *ibid*

⁵² *Facebook and Google Need to be Regulated, Says British News Industry*, Mathew Ingram, 10 March 2017 – see <http://www.mathewingram.com/work>

*decisions or influences their participation in civic or democratic life. If consumers are properly informed of the nature of the products that they view or consume online, this assists the efficient functioning of markets and consumer welfare’.*⁵³

REGULATORY MATTERS

MEAA note the ACCC’s comment that ‘it has been observed that data-driven network effects and economies of scale may give established digital platforms that possess large amounts of data an enduring competitive advantage’.⁵⁴

The effects of market concentration are already evident in Australia as a result of media companies’ dependency in having the major platforms refer traffic to their sites and from consumers’ growing reliance on the platforms as primary sources of news media content and carriage of news content on a stand-alone basis.

Misuse of Market Power

The recent *Harper* reforms to the *Competition and Consumer Act* should prove useful in enabling investigations and where appropriate, charges and prosecutions, should evidence emerge of digital platforms using their unrivalled might to improperly distort market outcomes.

This reform to section 46 will permit charges and findings that a corporation with substantial market power broke the law ‘if its conduct, simply, has the effect or purpose of substantially lessening competition’. As Gilbert and Tobin have observed, ‘now the effect or likely effect of the alleged conduct will be considered, and it is no longer necessary to show that a corporation has “taken advantage” of its power for prohibited purposes’. Conduct will meet the definition of section 46, ‘even if this was not the purpose of the conduct’.⁵⁵

As other members of the legal community have pointed out, ‘smoking guns, thoughtless emails or whistleblowers will no longer be required in every case – the ACCC or a competitor will be able to assess market impact using public information using objective market share and similar data.’⁵⁶

MEAA acknowledge the ACCC’s view that algorithmic disruption and anti-competitive behaviour can be pursued under the new misuse of market power provisions. Chairman Rod Sims is on record as noting that the now superseded law(s) may not have enabled this type of misconduct to be investigated, remarking that:

‘if you have algorithms that were owned by different companies that started to communicate with one another to push prices up, the concerted practices law could now deal with that. Previously we couldn’t’.

⁵³ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of Regions – Online Platforms and the Digital Single Market: Opportunities and Challenges for Europe, European Commission, Brussels, 25 May 2016

⁵⁴ See page 10 of ACCC’s digital platforms *Issues Paper*

⁵⁵ *It’s time: Harper changes to competition law pass through Parliament*, Gilbert and Tobin, 18 October 2017

⁵⁶ *August 2017 Competition Update: The “effects test” becomes law, and other competition reform news*, by Mick Coleman, Partner, Mills Oakley Corporate Advisory

And if you have alternatively companies using algorithms to keep competitors out, now we have a law to deal with that with the new misuse of market power provision [section 46 of the CCA] whereas before we didn't'.⁵⁷

MEAA does not have the capacity to fully assess and predict the scope of misconduct to be captured under the new section 46. We note that section 1(b) applies to 'supplie[rs] of goods or services, or is likely to supply goods and services'. It is not entirely clear whether digital platforms fit these definitions in the context of making news media content readily available to users. We reiterate our view that Google and Facebook are suppliers of news media content, in combination with their technological functions.

MEAA further note the establishment of the *Substantial Lessening of Competition (SLC)* unit within the ACCC, which will focus on investigations that could give rise to cases under the new laws.⁵⁸ We are nonetheless concerned that the task of investigating potential breaches falls upon 65 consumer investigators and 65 competition investigators throughout Australia.⁵⁹ Plainly there is a case for greater resourcing of the Commission.

Australia must also manage the risk canvassed by the House of Lords in 2016: 'online platforms that succeed in harnessing strong network effects can become the main provider in a sector, gateways through which markets and information are accessed, and an unavoidable trading partner for dependent businesses'.⁶⁰ The major digital players also 'acquire innovative firms, often at a significant premium, in order to gain a competitive advantage over rivals; it is important that competition authorities are vigilant to ensure that, in doing so, they are also not buying up the competition'.⁶¹

With respect to vertical integration, we note the ACCC Chairman's comment that:

'One problem we have is Facebook and Google have been very good at buying up people who could be their competitors and I think that is something the broader antitrust community has to keep an eye on ... WhatsApp and YouTube and things that could well have sprung up as competitors have been bought'.⁶²

Mergers and Acquisitions

MEAA do not doubt the complexity of discerning whether large companies frustrate the plurality of businesses, but close analysis over time must be conducted. MEAA trust that the ACCC will be vigilant in ensuring that Australia's already dire levels of media diversity are not further compromised by domestic mergers and acquisitions, particularly by existing large media or digital platforms. Further concentration will curtail community discussion and lead to further reductions in the journalistic workforce.

⁵⁷ ACCC on dealing with algorithms, Beverley Head, InnovationAus.com, 5 February 2018

⁵⁸ See: ACCC focusses on energy, broadband, net economy and financial services in 2018, ACCC Statement, 20 February 2018

⁵⁹ ACCC on dealing with algorithms, Beverley Head, InnovationAus.com, 5 February 2018

⁶⁰ House of Lords Select Committee on European Union, *Online Platforms and the Digital Single Market*, HL Paper 129, April 2016, page 4

⁶¹ Ibid., page 47

⁶² ACCC set to run the rule over digital giants, Andrew White, the Australian, 21 February 2018

With respect to the ACCC's jurisdictional power, we note that the vast majority of the digital platforms' IT acquisitions occur outside Australia and the ability to enliven the Commission's mergers and acquisitions powers is likely to be slim. However, as part of possible future reform to the CCA, MEAA restate our earlier proposal⁶³ that a public interest test be incorporated into section 50 of the Act, which sets out the grounds upon which acquisitions and mergers resulting in a substantial lessening of competition can be prohibited.

Authorisations Process

Competition law in the US and in Australia generally prohibits collective bargaining among trading interests unless an exemption is granted. In Australia, this is through section 88 of the *Competition and Consumer Act*. We note with interest that part of the 2017 reforms to the ACCC's authorisations process is the Commission's ability to grant authorisations when it is satisfied that the authorisation 'is likely to result in a net public benefit'.

In the United States, it was reported last year that the News Media Alliance, representing 2000 US newspaper companies, started the process of securing an anti-trust exemption from the US Congress.⁶⁴

US commentators observed that this 'maneuvering' was less about occupying digital territory, but about the 'endurance of quality journalism – expensive to produce, and under economic pressure as never before – at a time when fake, cost-free "reportage" can gain enough prominence to drive federal initiatives'.⁶⁵ Mark Thompson, the Chief Executive of The New York Times Company, stated that 'the temperature is rising in terms of the concern, and in some cases anger, about what seems the like a very asymmetric, disadvantageous relationship between the publishers and the very big digital platforms.'⁶⁶

Australian regulators should be favourably disposed to this form of exemption for domestic media companies, but also keep an open mind to additional reforms, especially the inclusion of a good faith requirement for collective bargaining authorisations under section 88 of the CCA.⁶⁷

Pricing Behaviour

The Commission has a range of powers to pursue unjust price setting arrangements, under price limitation provisions of the CCA and through the recent *Harper* reforms.

Whether enabled by algorithm or human conduct (or both), the ACCC must – as it has indicated with the Australian energy companies - be alive to how whether large digital platforms set inflated prices. This said, the ACCC nor the Government have foreshadowed any regulatory mechanism to deal with apparent price exploitation other than the improbable proposition to break up large companies.

⁶³ See MEAA's submission to the ACCC concerning the review of the Commission's Media Merger Guidelines.

⁶⁴ *Media companies are speaking up against the dominance of Facebook and Google*, Luica Moses, Digiday, 8 March 2018

⁶⁵ *News Outlets to Seek Bargaining Rights Against Google and Facebook*, Jim Rutenberg, Mediator, 9 July 2017

⁶⁶ *ibid*

⁶⁷ MEAA obtained an exemption for freelance journalists to seek standardised rates of payment with Australian media organisations several years ago. We found that possessing an exemption was pointless due to several companies steadfast refusal to meet with MEAA to discuss our proposals. There was no apparent legal remedy to compel the media organisations to engage in good faith bargaining. Faced with such recalcitrance in the industrial arena, MEAA could exercise its right to pursue bargaining orders through the Fair Work Commission. MEAA acknowledge that the ACCC has recently simplified the section 88 authorisation process and extended its reach to misuses of market power.

MEAA note the potential applicability of the ACCC's recommendations arising from its review of Retail Electricity Pricing, for which a final report is due in June 2018.

Privacy and Data Usage

The basis for increased (and overdue) scrutiny of digital platforms' privacy standards was clearly stated by the House of Lords in 2016:

'Concerns about privacy have assumed an increasingly high profile in the wake of revelations from Edward Snowden that US security services were scrutinizing non-US citizens personal data held in the US and that such data were being provided by Apple, Facebook and Google, among others'.⁶⁸

The far more recent *Cambridge Analytica* case has again generated worldwide alarm among digital platform users and sparked a welcome round of regulator interest in how secure data is once obtained by a platform, but more pointedly, how that data can be mishandled for seemingly improper purposes.

The *Privacy Act* 1988 creates obligations as to the collection, storage and use of personal information and requires disclosure, when the personal information is collected, as to how the information is to be used. *Australian Privacy Principle One* requires entities that are subject to the *Privacy Act* to have a clearly expressed privacy policy about how they manage personal information.⁶⁹

The *Privacy Act* has not protected consumers from overly-complex and one-sided interpretations of privacy laws by digital platforms (among others). MEAA agree with the House of Lords observation that:

'It is clear that dominant online platforms could potentially abuse their market position by degrading privacy standards and increasing the volume of data collected from their users'.⁷⁰ Although the Committee demurred as to recommendations, it further stated that 'these concerns underline the clear need for the enforcement of data protection to be sufficiently robust to deter bad behaviour'.⁷¹

The House of Lords also referred to 'opaque and legalistic privacy notices' used by online platforms and concluded that 'We also identify a lack of competition between platforms on privacy standards, and suggest that online platforms could potentially abuse a dominant position by downgrading their privacy standards'.⁷²

Following reporting of the *Cambridge Analytica* case, David Glance wrote that:

'Facebook does not make the process of collecting data from its platform particularly difficult. It is essentially an "honour code" with few negative consequences to those who abuse it. Facebook itself uses this type of approach to target ads to users and so refrains from criticising others for

⁶⁸ *House of Lords Select Committee on European Union report on Online Platforms and the Digital Single Market*, page 12

⁶⁹ Drawn from *ArtsLaw Centre* privacy advisory note

⁷⁰ *Ibid*, page 51

⁷¹ *Ibid*, page 51

⁷² *Ibid.*, page 5

*doing the same. Facebook has itself experimented with influencing voting intentions of its users without getting informed consent.*⁷³

The ACCC will be aware of the European Union's recent adoption of data protection rules.⁷⁴ These regulations come into force in May 2018. They represent one set of data protection rules for all companies operating in the EU, wherever they are based and permit people to have more control over their personal data, while setting out conditions for businesses to benefit from a level playing field.

In a victory for sensible regulation, 'concise, intelligible and easily accessible privacy notices will be required using clear, plain language. Users will control how their data is organised. Breaching the General Data Protection Regulation will be costly, with fines of Euro 20 million (\$32 million AUD), or 4 per cent of global turnover'.⁷⁵

In Australia, MEAA note two recent events that should meaningfully reduce risk and enhance consumer protections.

The first is the Productivity Commission's recommendation from 2017 that 'all consumers would have the right to obtain a machine-readable copy of their own digital data, provided to them and/or to a nominated third party, such as a potential new service provider. The ACCC Chairman has noted that the new Comprehensive Right will have a rebalancing effect, stating that 'business is obtaining a large benefit from this data; now consumers can'.⁷⁶

Under the Productivity Commission proposal, which now appears to enjoy the support of the Federal Government, consumer data would be available on request and 'would be a joint asset between the individual consumer and the entity holding the data'.⁷⁷ (We further note that the ACCC will make the rules that are to be adopted in Australia.⁷⁸)

The second is the investigation announced by the Australian Privacy Commissioner on 5 April 2018. The investigation will determine whether Facebook breached the *Privacy Act*. In particular, the Privacy Commissioner will examine whether Facebook observed its statutory duty to 'take reasonable steps to ensure that personal information is held securely and that customers are adequately notified about the collection and handling of their personal information'.⁷⁹ It has been reported that one in fifty (or over 300,000) Australian Facebook users were affected by the Cambridge Analytic data breach. Fines in excess of \$2 million are available should Facebook be prosecuted.

⁷³ *It's Impossible for Facebook users to protect themselves from data exploitation*, David Glance, University of Western Australia, published by the Australian Privacy Foundation, 27 March 2018

⁷⁴ See: https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en

⁷⁵ *Australian business to get privacy laws suitable for the Facebook era*, James Eyers, Bloomberg Media, 2 April 2018

⁷⁶ *Populism and the CCA*, Rod Sims, ACCC, RBB Economics Conference, 30 November 2017

⁷⁷ See Chapter 5 of the Productivity Commission's report – *A Right for Consumers, New competition policy – a right to use your data*, Productivity Commission, 2017

⁷⁸ *Australian business to get privacy laws suitable for the Facebook era*, James Eyers, Bloomberg Media, 2 April 2018

⁷⁹ *Facebook investigated by Australian privacy watchdog over suspected data-sharing*, Michael McGowan, 5 April 2018.

It is alarming to say the least that Facebook has been reported to ‘not know precisely what information was shared with Cambridge Analytica’.⁸⁰

Media Regulation

With regard to the ACCC’s question concerning whether digital platforms should be subject to the same laws and regulations as Australian media companies, MEAA’s preliminary view is yes, although we support a specific review being conducted into this question by ACMA and other relevant agencies.

Due to the volume of media content and the apparent editorial role performed by algorithms (with or without human engineering), there seems to be a prima facie case for major digital platforms that carry news content to be subject to the Broadcasting Services Act 1992. At the very least, relevant digital platforms should make a considered effort to develop a meaningful industry-wide code of conduct about how it ensures that offensive, false, defamatory and other harmful materials deemed to be media content will not be displayed.

INTERNAL REFORMS

Google and Facebook have recently yielded in the debate about whether (and by how much) they should compensate news publishers. Each concession, however, appears to coincide with a period of torrid domestic and international debate about the (allegedly) unfair conduct of the major internet companies and community and calls for regulation and/or sweeping changes to business practices.

Google

Google has now abandoned its ‘first-click free’ policy, which required publishers to allow free access to up to three news items each day. Google is replacing the first click free policy with a system called ‘flexible sampling’ whereby publishers decide ‘how many, if any, free articles they want to provide to potential subscribers’.⁸¹ Critically, ‘publishers will not be required to provide free content to be indexed [by Google]’ and publishers ‘will be able to adjust the presentation of content and offers according to different sub-segments or profiles’.⁸²

Google has also altered its algorithm to ‘show quality news more prominently in search results’, together with providing media organisations with specialist technical advice to increase online revenue,⁸³ largely through the *Google News Initiative*, which is a \$300 million, three-year program to assist publishers make better use of digital platforms.

MEAA welcome Google’s move away from the notion that it bore no responsibility for the downturn in the media industry because its carriage of free content to broader audiences represented a fair exchange of value.⁸⁴

⁸⁰ *Facebook under investigation by Australia’s privacy commissioner over Cambridge Analytica breach*, Matthew Doran, ABC News Online, 5 April 2018.

⁸¹ *Google makes peace with its most vehement critic*, Tony Boyd, Australian Financial Review, 10 November 2017

⁸² *Google: First Click Free is over, being replaced by Flexible Sampling*, Greg Sterling, Search Engine Land, 2 October 2017

⁸³ *News Outlets to Seek Bargaining Rights Against Google and Facebook*, Jim Rutenberg, Mediator, 9 July 2017

⁸⁴ The head of Google News Products, Richard Gingras, rejected the notion of payments being made to publishers in 2016. The basis of this rejection was that the ‘value exchange is there’, meaning there was equality in the relationship between content generator and content carrier.⁸⁴ *Google News rejects paying publishers for content*, The Australian, 21 March 2016

Facebook's News Feed

In August 2017, Facebook rolled out *Trending News* with its own navigational link in the mobile app's main navigation. The *Trending News* section features a list of news topics with an image, headline, the major news outlet reporting it, and the number of sources available on the topic.⁸⁵

Facebook has also announced significant changes to its *News Feed* service. The reforms include 'deprioritising videos, photos and posts shared by media and business outlets in favor of content provided by users' friends and family.'⁸⁶ Mr Zuckerberg has also said that *News Feed* would prioritise "high quality news" over less trusted sources.⁸⁷ Local news will also receive a higher ranking.

This will deal in part with content issues and the creation of so-called filter bubbles, but does not address the need for content providers, especially in the news media, to be compensated for their product.

Dependency

The moves towards improving platform reliability, generating quality news content and helping publishers improve their online presence (and revenues) are welcome, but the absence of regulatory action over the past decade means that there will also be adverse consequences.

It is now being reported that adjustments to news feeds and search algorithms have fostered a rapid decline referrals to news sites. *The Guardian* newspaper recently carried commentary that 'over the past three months, anecdotally some publishers tell me they have seen a steady drop-off in Facebook referred traffic, some sites by more than 40%.

The Guardian also noted the analytics site, Parse.ly, had observed last December that 'overall Facebook traffic referrals to publishers were sharply down, to about 26 per cent from 40 per cent over the year, while Google's was growing'.

This led the Guardian journalist, Emily Bell, to point to job losses and revenue downturns at several post-digital wave media organisations:

'Layoffs at social first news companies including BuzzFeed, Mashable, Mic and others are the hard evidence that the distributed model for news is simply not working in the way that venture capitalists and entrepreneurs thought it would'.⁸⁸

Media companies' dependency upon digital platforms is not enabling just market outcomes in either the so-called legacy media or the new digital-only media.

MEAA remains hopeful that the changes embraced by Google and Facebook will see growth in digital subscriptions, but we do not believe that they will restore the abundant losses suffered by media organisations in the last decade. Subscription fees cannot make up for the flight of ad dollars to digital platforms.

⁸⁵ *Facebook Newsfeed Algorithm History*, Wallaroo Media, 30 January 2018

⁸⁶ *Facebook overhauls News Feed in favour of meaningful social interactions*, Julia Carrie Wong, *The Guardian*, 12 January 2018

⁸⁷ *Your Facebook feed is changing. Here's how the changes will impact you*, ABC News Online, 20 January 2018,

⁸⁸ *ibid*

IMPACT ON PUBLIC INTEREST JOURNALISM

In contrast to the cuts and masthead closures in the media marketplace, the audience for news content is growing. According to the most recent survey by Roy Morgan Research, the number of Australians who read or accessed a newspaper's content via print, web or app in an average 7-day period in March 2013 was 19.9 million. Four years later the same basket of mastheads was recording a total audience of 22 million.⁸⁹

Although total readership is up, income is down for media companies and others who generate content. It is a grotesque conundrum. Paid readership numbers have plummeted as consumers bypass paywalls to get their news via a search engine or social media.

Hugh Stephens, a former Time Warner Executive, has captured the impact on journalism worldwide:

*'Reputable journalism used to be the safeguard against fabrication and propaganda but the media industry, particularly print journalism, is reeling from the digital onslaught with ad dollars fleeing print for online distribution, while the journalists labour to produce expensive and verified content that is monetised by others – internet-based intermediaries.'*⁹⁰

In Canada, it has been said that 'the odd blend of content fragmentation, revenue consolidation and indifference to truth has overtaken simple concentration of ownership as the main threat to holding public officials to account and reflecting society back to its citizens'.⁹¹

Digital platforms plainly benefit from their carriage of news content. It is disingenuous to assert that the ability of users to access media content on their platforms does not aid their viability and revenue streams.

The viability of Australian media companies is unknown - even the best performing companies can only eek out modest profits after the now serial write-downs in masthead value, job shedding and the systematic culling of expensive public interest journalistic efforts.

The void is now growing larger and cannot be filled by (poorly or non-remunerated) freelance journalists and small online media entities with lower overheads, but a restricted breadth of stories. For journalism to be sustainable and serve a public purpose, funding is necessary.

MEAA has previously called (via the Public Interest Journalism Inquiry) for the Australian Government to provide concessional tax treatments to Australian media companies and subscribers. We have also presented evidence from Europe and elsewhere concerning arms' length direct and indirect government assistance to media companies via contestable funding rounds. We are however wary of how Government funding could itself be manipulated in favour of some, but not all media outlets.

MEAA's strong preference is for Australian media companies to be provided with a merit-based, free market. This can only be restored if the major digital platforms' distortive and unfair dissemination of

⁸⁹ See: <http://www.roymorgan.com/industries/media/readership/newspaper-readership>

⁹⁰ *Taplin's book is a somber warning and call to action*, Hugh Stephens blog, 11 July 2017.

⁹¹ *The Shattered Mirror: News, Democracy and Trust in the Digital Age*, Public Policy Forum, January 2017, page 3

news content is curtailed or commercially appropriate terms are agreed between publisher/broadcaster and digital platform(s).

We do not say that advertising revenues should be redirected from digital platforms to news media companies; this would constitute punishment of the digital platforms for providing what in many instances are superior advertising mechanism and audience reach.

MEAA's view is that the fruits of these platforms' carriage of news media content they do not produce should be paid for on an access-per-user or levy basis.

Without either regulatory effort and major operational changes by digital platforms, the media sector will be further diminished in terms of already very low levels of media diversity and quality content.

As Paul McIntyre wrote in *The Australian* two years ago, 'legacy media, in the main, is not facing a crisis of audience relevance. The far more urgent challenge is the crisis of content economics. Plenty of that – not all – can be pinned on Google and Facebook'.⁹²

The gravest risk of doing nothing is that those who invest in producing public interest and other journalism will not have the means to continue covering the news that impacts public information and discourse. The displacement of conventional media organisations (other than public broadcasters, which face funding challenges of their own) will lead to a dearth of content to upload and draw consumers in.

Perversely, the last people standing will be those who aided the demise of pre-existing media companies. What quality news content will be left for them to disseminate?

⁹² *Google, Facebook need to pay old media for content*, Paul McIntyre, *The Australian*, 21 March 2016

APPENDIX ONE

Senate Select Committee on the Future of Public Interest Journalism

(February 2018)

Recommendation 1

The committee recommends that the ABC and SBS be funded adequately, so that they can deliver on their charter obligations, support rural and regional service provision and have a strong fact checking capacity.

Recommendation 2

The committee recommends that the Commonwealth provide additional surety in future funding for the community broadcasting sector beyond the forward estimates, in particular what component will be set aside for training and education, and ensure that the sector is fully consulted in the national rollout of digital services.

Recommendation 3

The committee recommends that the Commonwealth work with the states and territories through the Council of Australian Governments to determine how areas of the Australian Curriculum may be improved regarding digital media awareness and media literacy.

Recommendation 4

The committee recommends that the Commonwealth develop and implement a framework for extending deductible gift recipient (DGR) status to not-for-profit news media organisations in Australia that adhere to appropriate standards of practice for public interest journalism.

Recommendation 5

The committee recommends that the Treasury undertake cost-benefit modelling on extending the tax deductible status of news media subscriptions to all Australians, not just those who can already claim the cost of subscriptions through existing income tax arrangements, for subscriptions to news media organisations in Australia that adhere to appropriate standards of practice for public interest journalism.

Recommendation 6

The committee recommends that the Australian Law Reform Commission conduct an audit of current laws that impact on journalists reporting on matters that touch on or focus on national security and border protection, to identify and analyse unjustifiably harsh or draconian laws,

inconsistencies in the law and any lack of clarity in the law regulating the work of journalists in this context, and to consider whether further reform is needed to achieve an appropriate balance between the need to preserve national security and the need for journalists to be able to carry out their work in the public interest.

Recommendation 7

The committee recommends that the Commonwealth work with state and territory jurisdictions through the Council of Australian Governments to complete a review of Australian defamation laws, and subsequently develop and implement any recommendations for harmonisation and reform, with a view to promoting appropriate balance between public interest journalism and protection of individuals from reputational harm.

Recommendation 8

The committee recommends that the Commonwealth look at ways to expand whistleblower and shield law protections, and to harmonise those laws between the Commonwealth and state and territory jurisdictions, noting the work in this area already underway.