

**ACCC INQUIRY INTO DIGITAL PLATFORMS  
PIJI Submission further to the Preliminary Report**

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Submitted on behalf of the  
Public Interest Journalism Initiative  
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## **INTRODUCTION**

The Public Interest Journalism Initiative [PIJI] appreciates the opportunity to provide the observations that follow further to the Inquiry's Preliminary Report (December 2018).

PIJI welcomes the unambiguous recognition in the Preliminary Report that news and journalism have public value, and that the production and private consumption of news and journalism provide significant benefits to both individuals and society as a whole. We also welcome the ACCC's extensive analysis and commissioned research, and we agree with the conclusion that public interest journalism is in crisis, and action is both needed and justified.

PIJI recognises the significance of the proposals on regulatory measures and oversight in the preliminary report. PIJI broadly supports the ACCC's preliminary views regarding the need for greater transparency and regulation of digital platforms. However, in this brief submission we focus on the ACCC's canvassing of pro-active measures that might be taken by governments to support the public value in journalism.

## **THE PUBLIC INTEREST JOURNALISM INITIATIVE [PIJI]**

PIJI is a not-for-profit body established as a limited life initiative (3-5 years) to conduct research, develop policy and promote public discussion on ensuring a sustainable future for public interest journalism. The need for this is evident in the ACCC's own analysis of the challenges confronting providers of news and journalism.

PIJI is determinedly independent and non-partisan. It does not come to the policy table with a fixed view but rather a determination to the hard work is done in thorough research and policy elaboration.

## **WHAT PIJI MEANS BY PUBLIC INTEREST JOURNALISM**

Public interest journalism (broadly the Fourth Estate) is essential to the proper functioning of democracy. It not only holds power to account but is critical to an informed citizenry. It is institutionally critical to constituting a genuinely deliberative democracy.

Public interest journalism includes both highly prized investigative journalism and the essential daily grind: recording, investigating and explaining public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision-making.

More formally, PIJI has adopted its definition of public interest journalism in keeping with that used by the Australian Government.

*Public interest journalism has the primary purpose of recording, investigating and explaining public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision making.<sup>i</sup>*

## **FUNDING THE PRODUCTION OF NEWS AND JOURNALISM**

The Preliminary Report is consistent with a number of Australian and international studies highlighting the impact of the flight of advertising dollars to the digital platforms and related developments on public interest journalism.

PIJI strongly supports the ACCC's conclusion that "It is very important that governments recognise the role digital platforms perform in our individual and collective lives and to be

responsive, and indeed proactive, in reacting to and anticipating challenges and problems”.<sup>ii</sup> Given the importance of public interest journalism, the scale of the challenge and the deepening uncertainties, positive measures on the part of government are imperative.

We also support and agree with the ACCC’s observations that digital platforms perform functions and provide services that overlap with those traditionally performed and supplied by news media organisations. We believe this is a better way of understanding the issues than asking whether or not digital platforms are “publishers” or “broadcasters” since the meaning of the words “publish” and “broadcast” has changed and is changing. It is better, as the ACCC has done in the preliminary report, to look at the functions performed and the public goods that are provided and impacted by digital platforms.

Clearly, digital platforms are key distributors of news content, and have become a key means by which news, including journalism, is distributed, produced, accessed and consumed. They have also enabled the entry of non-professional journalists to the news business, which brings many benefits but also dangers. All this, together with the significant market power of the platforms and their devastating impact on the revenues of traditional journalism outlets justifies government action. It is not sufficient for the digital platforms to protest that they are not publishers in order to evade regulation.

Moving to positive government action to support public interest journalism and the public goods it brings, Australia is not alone in wrestling with these issues. Like-minded governments are recognizing the need and responding accordingly. There is growing confidence that it is possible for government to implement positive measures to support public interest journalism while preserving the fundamental principles of journalistic independence and standards.

The Canadian Government has followed a commitment in its 2018 Budget to provide C\$50m over five years to support local journalism in under-served communities. This has been dwarfed by the announcement in that government’s 2018 Fall Economic Statement that it would be introducing three new measures at a cost of C\$595m over five years: “allowing non-profit news organizations to receive charitable donations and issue official donation receipts, introducing a new refundable tax credit to support original news content creation, including local news, and introducing a new temporary non-refundable tax credit to support subscriptions to Canadian digital news media”.<sup>iii</sup>

The policy stipulates that any mechanism to support the news sector must comply with two key principles:

- Be arms-length and independent of the Government. To this end, an independent panel of journalists will be established to define and promote core journalism standards, define professional journalism, and determine eligibility.
- Be focused on the creation of original news content.

Other principles could be added, including recognition of the point the ACCC itself has made that “plurality of editorial voices contributes to the public interest”.<sup>iv</sup>

PIJI believes that the contemporary news media is best understood as an eco-system. Diversity is key to the health of the eco-system.

Even more recently (12 February), Dame Frances Cairncross has delivered to the UK Government her much-anticipated report on securing the future of high-quality journalism in Britain.<sup>v</sup>

Cairncross emphasizes the need for ways to foster innovations in technology and in business models, and to ensure sustainable private provision of public-interest news. However, she suggests that, given the evidence of a market failure in the supply of public-interest news, public intervention may be the only remedy. She ultimately concludes that:

*Government has several roles in supporting the future of journalism. One is to ensure that markets work fairly, and are not distorted by large companies. Another is to help publishers adapt to the online world, by encouraging the development and distribution of new technologies and business models. These apply to all high-quality journalism. But in the case of public-interest journalism, there are wider responsibilities.<sup>vi</sup>*

Notwithstanding the critical importance of properly funded public broadcasting, PIJI remains of the view that the bulk of public interest journalism will continue to be generated by private publishers (primarily for profit but also not for profit media organisations).

The point here is simply to recognise, as is evident above and in the ACCC's own findings, that current circumstances require considered government support.

Cairncross, for example, makes several recommendations in this regard including: a new fund focused particularly on innovations aimed at improving the supply of public-interest news; measures to 'plug the local gap' to ensure the continued supply of local democracy reporting; the development of a form of tax relief, ideally under the Charities Act to support public-interest journalism.

## **MEASURES FOR SUPPORTING PUBLIC INTEREST JOURNALISM**

The ACCC identified several proposals aimed at improving capacity to fund the production of news and journalism.

PIJI takes this opportunity to offer some comment before turning to one or two other possibilities.

### **A. Proposals on which the ACCC is seeking Feedback**

#### **(a) The Regional and Small Publishers' Jobs and Innovation Package in 2018–19**

PIJI is aware that the first round of funding revealed issues with both the criteria for seeking funding, and the application process. This is reflected in the fact that there was a significant underspend on approved grants (29 grants to 25 of the 186 applicants).

This is not surprising given this is a new funding. In short, caution should be exercised in drawing too many conclusions at this stage.

However, PIJI's conversations with industry players and recent Australian research strongly lead us to the conclusion that the core problem is restrictive criteria on what can be funded – namely the funding of infrastructure and business improvement processes. This is not what is needed. What is most urgently needed is more journalists to be employed to allow the reporting of public affairs – courts, local governments and public issues.<sup>vii</sup>

PIJI suggests that improvements can be made, including:

- Revising the funding eligibility to allow for the employment of journalists. To avoid funds being used simply as employment subsidies, the criteria could include either the establishment of new journalistic practices (data journalism; podcasting; collaborative journalism initiatives) or specify that funding is to be spent on currently unfulfilled journalistic functions, such as court reporting, local government reporting or investigative journalism. This could entail either the employment of more journalists, and or journalists with new skills, or the upskilling of existing staff.
- Expanding the funding eligibility to explicitly encourage applications to support new forms of media ownership and user engagement.
- Exploring new models for the funding submissions that could better tailored to the sector itself.
- Providing communications that showcase innovative practices in Australia and internationally that may be of interest and spark ideas.
- Emphasising the public value in civic forum journalism,<sup>viii</sup> including the independent scrutiny and reporting of local governments, business and the courts.

(b) **“Tax offsets for the costs incurred by news media organisations to produce particular types of journalism that have high public benefits and are at risk of under-production.”**

The LSE Media Policy Project has observed that the most frequent and ‘from a financial point of view, most important’ indirect form of support are tax breaks.<sup>ix</sup>

This is a powerful idea. Australian has previously seen a burgeoning of cultural industries that have been subject to tax offsets, with the film industry an obvious example. PIJI proposes in the next few months to conduct modelling on this and other potential tax measures. Clearly, further work is required to assess the impact of any such measures. However, PIJI believes that properly designed tax measures are likely to have exceptional benefits in supporting and expanding capacity over the longer term, and are likely to have greater impact than other, still desirable, measures such as tax deductibility for philanthropic donations.

PIJI has not yet conducted formal research by way of a survey – although we plan to do so in the next few months. Nevertheless, the question has arisen in conversations with publishers and editors. One publisher, for example, recently indicated that tax offset against the employment of journalists directly engaged in public interest journalism would immediately be translated into the employment of more journalists.

The option of tax concessions and/or incentives for eligible media organisations is well accepted internationally and has attracted general (though not universal) support in discussions in Australia.

This can take various forms.

One proposal is based on the research and development tax incentive (R&DTI); for example, a proposal for a 40 per cent write-off for up to \$2.5m spent on employing journalists – deductions of up to \$1m using the R&DTI model – within a turnover range of \$300,000 - \$25m. <sup>x</sup>

Another option would be to adapt the model of tax offsets used to support screen production. PIJI is aware that the ACCC raised this option noting that ‘the tax offsets provided to producers of Australian film, television and online video content are designed to incentivise investment in the Australian screen industry... these tax incentives are intended to provide tangible benefits in

supporting the Australian film industry, and intangible benefits, such as the cultural value derived through the availability of Australian stories on screen’.

The **Producer Tax Offset** (some \$200m) overseen by Screen Australia, for example, may be worth mining for ideas:

*The Producer Offset is a refundable tax offset (i.e. a rebate) for producers of Australian films, worth:*

- 40 per cent of the QAPE incurred by the applicant company in the making of a feature film, and
- 20 per cent of the QAPE incurred by the applicant company in the making of TV and other eligible projects, other than feature films.

*Films are only eligible for the 40 per cent offset if they are feature films produced for exhibition to the public in cinemas and meet all offset requirements. A film will only be eligible for the feature film offset if the primary release strategy for the film is a release in public cinemas. Films produced for home entertainment, TV or VOD release are not eligible for the 40 per cent offset but are eligible for the 20 per cent offset if they meet all offset requirements. The higher offset is available for feature films because they generally have higher production costs and it can also be more difficult to finance feature films because they are one-off projects. Refer to Feature Films and Distribution.*

*The Producer Offset is one of three refundable tax offsets for film production; the others are administered by the Department of Communication and the Arts (the Department):*

- the Location Offset, a 16.5 per cent offset on QAPE for film and television projects filmed in Australia with an Australian spend of over \$15 million
- the Post, Digital and Visual effects (PDV) Offset, a 30 per cent offset on the QAPE that relates to post, digital and visual effects production for a film.

The Canadian Government intends introducing a ‘new refundable tax-credit’ for qualifying (not-for-profit and for profit) news organisations specifically supporting labour costs ‘associated with producing original news content’.

Any measure should be subject to principles such as ensuring editorial independence. There are certain advantages with tax offsets: properly designed, the measure can be applied equally removing the need for discretionary decision-making and the associated risk of compromise; it can have broad reach; expenditure can be capped by appropriately refined eligibility criteria or limits on total claims.

**(c) “Making personal subscriptions for publications , tax deductible to encourage production and consumption of news and journalism. This measure to be accompanied by a requirement that eligible publications are signatories to a registered ACMA code of practice, and/or an industry self regulation scheme meeting certain standards.”**

PIJI can see value in this proposal to make personal subscriptions deductible if it were shown to be an active incentive for individuals to pay for their news. We are aware that there is international precedent.

However, PIJI is not aware of research that might answer the question as to whether tax deductibility of subscriptions actually increases the number of subscribers or primarily

represents a benefit to existing subscribers. The other unknown is just what proportion of current subscribers are already deducting subscription costs.

## **B. Further Measures**

### **(d) Public Interest Journalism Content Production Fund**

The Public Interest Journalism Foundation has previously recommended the creation of an independent production fund backed by the Commonwealth in its [submission](#) to the Senate Select Committee on the Future of Public Interest Journalism.<sup>xi</sup>

A fundamental concern is that direct government support does not compromise editorial independence.

Proposals for direct government support will need to pass the test when it comes to firewalling journalism from government influence. Existing models that may be subject to adaptation include the Australia Council for the Arts and the Australian Research Council, both of which make decisions about funding “content” at arm’s length from government– although both have been subject to controversy regarding instances of political influence.

One suggestion could be to establish an endowed fund created by government contributions over time. The fund would have the returns on investment to disburse. This would remove the risk of the government of the day controlling the purse strings. Another measure might be to establish long funding cycles to remove the impact of short-term controversies. For example the ABC’s funding is awarded triennially. Longer periods – perhaps ten years – could be considered.

Direct government support (in addition to public broadcasting) is provided in a number of countries. Some, in Scandinavia and France for example, have done so over a long period. As the [Reuters Institute](#) notes: “Whether [direct government support] indeed does undermine the independence of news organisations depends on a whole host of factors, including the structure of the media industry in question and the state of individual news companies, the character of a country’s political system, and the kind of professionalism cultivated amongst journalists”.<sup>xii</sup>

There are lessons to be learned and careful design is paramount,

### **(e) Extending Deductible Gift Recipient (DGR) status to organisations producing public interest journalism**

The national expenditure on public interest journalism is substantial; indeed, it can safely be assumed to run to the billions of dollars annually. In this context philanthropic support will always be a minor contributor to the overall revenues available to public interest journalism. In this sense, increasing the opportunities for philanthropic support does not and will not threaten the broader competitive environment.

However, while the dollar value of philanthropic support may be modest it does enrich the media environment including by:

- Supporting innovation, including through a higher tolerance of risk;
- A preparedness to back smaller-scale local and regional media organisations;

- Investing in investigative projects that may otherwise be deemed too expensive and/or coverage of neglected issues;
- Allowing for greater media diversity.

While the level of current philanthropic support for public interest journalism has not been established, it is safe to assume that this is very modest. At the same time, Australian philanthropy is growing in dollar terms (A\$12.5 billion in 2015-16 compared to \$4.7 billion 10 years earlier). It is significant and capable of making a greater contribution to supporting public interest journalism.

Accessing philanthropic funds for public interest journalism is difficult even for not-for profit media under the current legislative and tax arrangements; possibilities do exist but they are limited, expensive, time-consuming and uncertain – often involving unnecessarily complex organisational arrangements and significant delays.

The experience to date suggests that the current legislative framework is stunting philanthropic support for public interest journalism.

PIJI suggests that in order to expand the opportunities for philanthropic support then the first step is to make specific legislative provision for donations (gifts) to eligible not for profit media organisations to be tax deductible. Consideration should also be given to tax deductibility for donations (gifts) supporting designated journalistic activity (eg investigative reporting; court reporting).

There is the related question of providing DGR status to not for profit organisations that support public interest journalism but are not themselves media organisations; that is they are not in the business of ‘doing journalism’. There is a benefit in providing a higher degree of encouragement and certainty through an appropriately crafted provision under a media specific category.

There are several design questions to be addressed. None are insurmountable and there is growing international experience to draw upon.

Foremost amongst these questions is how to determine eligibility. In this regard, Dr Bill Birnbauer’s recommendation in his submission to the Senate Select Committee on the Future of Public Interest Journalism, provides a sound starting point.<sup>xiii</sup>

There is growing international recognition of the potential benefits for extending measures enabling philanthropic support for public interest journalism.

The Canadian government’s commitment in its ‘fall economic statement’ (Nov 2018) to introducing a new category of ‘qualified donee’ specifically covering non-profit journalism organisations may bear further examination. As qualified donees, eligible non-profit journalism organizations would be able to issue official donation receipts, which allows donors to benefit from tax incentives for charitable giving (including the Charitable Donations Tax Credit for individuals and deductions for corporations). As qualified donees, these organizations would also be eligible to receive funding from registered charities.<sup>xiv</sup>

Even more recently, the Cairncross Review in the United Kingdom is reported to be recommending strong measures to directly support public interest journalism.<sup>xv</sup>

While the culture and scale of philanthropy in the US is unique, philanthropy is proving to be critically important to supporting new and transforming news organisations, investigative and civic journalism including in local communities and regional cities.

The US experience is instructive and is examined in depth in Dr Birnbauer's recent book, *The rise of nonprofit investigative journalism in the United States*. Birnbauer provides a number of examples and his observations are relevant here, including the recognition that support for not for profit journalism is not confined to major foundations but that small individual donations are significant.

*"An online platform, NewsMatch, established by the Knight Foundation in a partnership with the Democracy Fund, the MacArthur Foundation, the Gates Family Foundation, and the support of several other large foundations, made it easier for people to find and donate to nonprofit news organizations in their region. NewsMatch matched any donation up to \$1,000 from individual donors. Other foundation supporters joined in to double-and triple-match public donations. In the final quarter of 2017, more than 202,000 donors had contributed \$33 million to nonprofit news organizations. About 43,000 donors were first-time givers to nonprofit news. NewsMatch raised 4.8 million from individual donors and selected foundations (NewsMatch, 2018<sup>xvi</sup>)."<sup>xvii</sup>*

Birnbauer concludes that "...the short-term trend is reassuring to those who care about quality journalism because developments in the nonprofit sector represent hope in a landscape where the news for journalism has been terrible for decades."

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<sup>i</sup> This definition is a variation on that adopted by the The Regional and Small Publishers Innovation Fund: *Civic journalism has the primary purpose of investigating and explaining public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision making.*

<sup>ii</sup> ACCC, Digital Platforms Inquiry Preliminary Report, Canberra, Dec 2018, p.8.

<sup>iii</sup> Canadian Government Department of Finance, "Continued Progress for the Middle Class", November 2018.

<sup>iv</sup> ACCC, p.240

<sup>v</sup> Cairncross, F, *The Cairncross Review: a sustainable future for journalism*, 12 February 2019

<sup>vi</sup> Cairncross, p.88

<sup>vii</sup> Carson, A., Muller, D., Martin, J., & Simons, M. (2016). A new symbiosis? Opportunities and challenges to hyperlocal journalism in the digital age. *Media International Australia*, 161(1), 132-146. Further research referenced here, specifically dealing with court reporting, and news media in regional areas, is awaiting publication, but can be provided on request.

<sup>viii</sup> Simons, M., Tiffen, R., Hendrie, D., Carson, A., Sullivan, H., Muller, D., & McNair, B. (2017). Understanding the civic impact of journalism: A realistic evaluation perspective. *Journalism Studies*, 18(11), 1400-1414.

<sup>ix</sup> Schweizer, C. et al, *Public Funding of Private Media*, Media Policy Brief 11, LSE Media Policy Project, March 2014

<sup>x</sup> Senate Select Committee on the Future of Public Interest Journalism 2018: 122

<sup>xi</sup> Submission 13:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Future\\_of\\_Public\\_Interest\\_Journalism/PublicInterestJournalism/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism/PublicInterestJournalism/Submissions)

<sup>xii</sup> Rasmus Kleis Nielsen with Geert Linnebank, *Public Support for the Media: A Six-Country Overview of Direct and Indirect Subsidies*, Reuters Institute for the Study of Journalism, August 2011.

<sup>xiii</sup> *In determining the suitability of applicants for deductible gift recipient (DGR) status, the ATO ought to consider in particular:*

- *The history and background of the applicant as a journalist, particularly adherence to professional and ethical standards.*
- *The applicant’s ability to produce investigative and public interest journalism.*
- *Whether the organisation has editorial processes that create stories that are in the public interest and educate audiences rather than covering news of popular interest.*
- *Introducing a commitment that funding sources, including publication of the identities of donations of more than \$1000, be published on the non-profit’s website.*
- *A commitment to publish on their websites information about spending and revenue, as provided each year to the ATO and/or the Australian Charities and Not-for-Profits Commission.*
- *Individuals and organisations that advocate particular causes should not be granted DGR status under any media category. The guidelines used by the IRS are useful in this regard.*
- *Anonymous grants or funding from political and other entities where the source of the funding is not transparent should be banned.*

<sup>xiv</sup> Canadian Government Department of Finance, “Continued Progress for the Middle Class”, November 2018

<sup>xv</sup> “Public funds should be used to rescue local journalism, says report”, <https://www.theguardian.com/media/2019/feb/11/public-funds-should-be-used-to-rescue-local-journalism-says-report> accessed 13 February 2019.

<sup>xvi</sup> NewsMatch. (2018). NewsMatch raises \$4.8 million for nonprofit news. Retrieved from Knight Foundation website: <https://knightfoundation.org/press/releases/newsmatch-raises-4-8-million-for-nonprofit-news>

<sup>xvii</sup> Birnbauer, B, *The rise of nonprofit investigative journalism in the United States*, London; New York: Routledge, 2019