



CENTRE FOR MEDIA TRANSITION

News Media Bargaining Code

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

Submission to Senate Economics Legislation Committee

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About the Centre for Media Transition

The Centre for Media Transition is an interdisciplinary research centre established jointly by the Faculty of Law and the Faculty of Arts and Social Sciences at the University of Technology Sydney.

We investigate key areas of media evolution and transition, including: journalism and industry best practice; new business models; and regulatory adaptation. We work with industry, public and private institutions to explore the ongoing movements and pressures wrought by disruption. Emphasising the impact and promise of new technologies, we aim to understand how digital transition can be harnessed to develop local media and to enhance the role of journalism in democratic, civil society.

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Introduction

Thank you for the opportunity to comment on the Bill.

The Centre for Media Transition has made submissions to the Australian Competition and Consumer Commission (ACCC) on both the Exposure Draft and the Concepts Paper. We also made a submission to Treasury on the implementation of the Final Report of the Digital Platforms Inquiry and to the ACCC on its Preliminary Report. In addition, our research report, *The Impact of Digital Platforms on News and Journalistic Content*, was commissioned by the ACCC as an input to its Preliminary Report.¹

Given the lengthy period of inquiry and rule development, and despite some ongoing reservations about the use of compulsory bargaining to address problems relating to the production of news, it is our view that Parliament should now move ahead and finalise a scheme based on this approach developed by the ACCC. We recognise that many interested parties will assist the Committee in its consideration of key components of the Bill. In this submission we address only the following aspect, which has been the subject of little comment:

- the **professional standards test** set out in **s 52P** (reproduced in Attachment 1 of this submission).

In summary, we think the professional standards test – which has been diluted from the version included in the Exposure Draft – is deficient but could be easily improved by removing the accommodation of ‘internal’ editorial standards and by adding a requirement for consumer access to an independent complaints scheme.

Comments on the Professional Standards Test

How the test works

Registration by the Australian Communications and Media Authority (ACMA) under s 52G as a news business is conditional on the applicant meeting the professional standards test in s 52P.

The Explanatory Memorandum does not offer further explanation but the reference to ‘quality journalism’ in s 52P(1)(a)(iv) offers a clue as to the rationale for this provision. In addition, the stated benefits of the Mandatory Bargaining Code approach (explained in the table on page 54 of the EM) specifically refer to the role of professional journalists (‘Remuneration for news content through negotiation or arbitration could contribute to sustainable employment of journalists and production of news content’).

The ACCC’s Concepts Paper also explained the connection between the production of news by professional journalists and membership of a news standards scheme:

The ACCC is also considering the issue of whether the bargaining code’s definition of news should require that content is produced by professional journalists, or published by a professional news media business. This may be accomplished by extending the application of the code to material produced by journalists and news media businesses that:

- are members of a relevant standards-setting body (such as the Australian Press Council, the Independent Media Council or the Media, Entertainment and Arts Alliance), or
- adhere to a relevant media industry code (such as the Commercial Television Industry Code of Practice or the Commercial Radio Codes of Practice), or

¹ Copies of our previous submissions are available from our website: <https://www.uts.edu.au/research-and-teaching/our-research/centre-media-transition/publications/centre-contributions-policy>. The research report is published on the ACCC’s website: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platforms-inquiry/accc-commissioned-research>.

- adhere to and publish equivalent internal journalistic standards (such as the Guardian Editorial Code or the Conversation editorial charter).

This third criterion may be necessary to avoid inappropriately excluding journalists and news media businesses that do not choose to be part of particular industry bodies or industry associations.

We seek stakeholder views on whether such mechanisms would provide a broad enough indicator of the news content that should appropriately be captured by the bargaining code.²

In the Bill, the concepts of ‘core news content’ and ‘covered news content’ do not include production of content by professional journalists. Indeed, the Explanatory Memorandum (p.21) states:

There is no requirement that the content be produced by a journalist. For example, news content produced by a team for broadcast television and radio could meet the definition of core news content.

These aspects underline the importance of the professional standards test: it is a proxy – or ‘broader indicator’, to use the words of the ACCC – for quality. Hence, it is largely the job of the professional standards test to ensure that the News Media Bargaining Code does not support undesirable and potentially harmful news content, such as inaccurate and unfair reporting or even misinformation and disinformation.

The problem with this test

Of the six ways in which a news business might meet the professional standards test, we consider the following three to be appropriate:

- (i) being subject to the standards of the Australian Press Council (APC)
- (ii) being subject to the standards in the Commercial Television Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Code of Practice
- (iii) being subject to the ABC Code of Practice or the SBS Codes of Practice.

In addition to these schemes (covered by ss 52P(1)(i) to (iii)), there is mechanical provision (52P(1)(v)) to allow for the Regulations to include rules that replace these rules, and a general provision (52(1)(a)(vi)) to allow for other rules specified in the Regulations.

Our objection relates to the stipulations set out in s 52P(1)(a)(iv), as follows:

‘...subject to internal editorial standards that are analogous to the rules mentioned in subparagraph (i), (ii) or (iii) to the extent that they relate to the provision of quality journalism’.

As we explained in our submission on the Exposure Draft, we regard it as regrettable that the News Media Bargaining Code would allow news businesses to meet the professional standards test on the basis of *internal* editorial standards only.

Our support for the schemes administered by the APC, the licensed broadcasters and the national broadcasters is based on two factors. The first of these is the scrutiny applied to the development of the code rules, in some cases with the involvement of the regulator.

The second is the operation of a complaints scheme that is independent of news businesses. Although a viewer or reader might complain to the news business in the first instance, those who are not satisfied with the outcome can take the matter to the APC or the ACMA. In our view, an independent complaints mechanism is a crucial component of a professional standards scheme.

² ACCC, *Mandatory News Media Bargaining Code: Concepts Paper*, May 2020, 4.

As it stands, s 52P(1)(a)(iv) allows for an internal code of ethics with no independent input or consultation and with no independent system for addressing complaints. This provision does not encourage the provision of quality journalism. In fact, it could have the opposite effect, providing less incentive for membership of professional standards schemes.

How the test can be improved

We think it is reasonable to expect more of news media organisations that receive a benefit from this scheme as a result of regulatory intervention. An internal set of guidelines, with no external accountability, may be sufficient for a purely self-governing environment but not for businesses that are benefiting from the intervention of Federal Parliament and two government regulators.

We suggest the following amendments:

1. change the reference to 'rules' in 52P(1)(a)(i) to (iii) and (v) to 'schemes' so that it will include the complaints-handling component;
2. delete s 52P(1)(a)(iv); and
3. amend s 52P(1)(a)(vi) to allow for the Regulations to specify other schemes that are independent of specific news businesses and that include a complaints-handling function.

ATTACHMENT

52P Professional standards test

- (1) The requirement in this subsection is met in relation to a news business if:(a) every news source covered by subsection (2):
- (i) is subject to the rules of the Australian Press Council Standards of Practice or the Independent Media Council Code of Conduct; or
 - (ii) is subject to the rules of the Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice; or
 - (iii) is subject to the rules of a code of practice mentioned in paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983* or paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*; or
 - (iv) is subject to internal editorial standards that are analogous to the rules mentioned in subparagraph (i), (ii) or (iii) to the extent that they relate to the provision of quality journalism; or
 - (v) is subject to rules specified in the regulations that replace those mentioned in subparagraph (i), (ii) or (iii); or
 - (vi) is subject to other rules specified in the regulations; and
- (b) every news source covered by subsection (2) has editorial independence from the subjects of its news coverage.
- (2) This subsection covers a news source if it comprises, whether by itself or together with other news sources, the relevant news business.