



CENTRE FOR MEDIA TRANSITION

Media Pluralism Research Project

University of Sydney
University of Technology Sydney

Media Diversity in Australia

Senate Standing Committees on Environment and Communications

**Joint submission from Centre for Media Transition
and Media Pluralism Research Project**

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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.

About the Media Pluralism Research Project

'Media Pluralism and Online News' is a four-year, Australian Research Council funded Discovery Project (2018-2021). The Chief Investigators are Associate Professor Tim Dwyer and Dr Jonathon Hutchison from University of Sydney and Professor Saba Bebawi and Professor Derek Wilding from University of Technology Sydney.

In this project the researchers are tracking the dynamic developments in the way news is produced and consumed online and are seeking to account for this in public policy designed to promote media pluralism. The aim is to transition the understanding of media pluralism by studying contemporary European policy approaches and a series of innovative news practices, including through making use of a big data approach to collecting media content.

This submission was prepared by:

- Professor Monica Attard
- Professor Saba Bebawi
- Associate Professor Tim Dwyer
- Dr Chrisanthi Giotis
- Dr Jonathon Hutchison
- Dr Sacha Molitorisz
- Professor Derek Wilding

Contact

Centre for Media Transition
Faculty of Law, University of Technology Sydney
Building 2, Level 15
UTS City Campus, Broadway
PO Box 123, Broadway NSW 2007

cmt@uts.edu.au
+61 2 9514 9669

cmt.uts.edu.au

Introduction and summary

We thank the Committee for the opportunity to make this submission.

Our submission is structured in a way that presents three distinct proposals for what can be done to provide practical solutions, at this moment in time, to prevent further media concentration and enhance media diversity.

1. Develop a measurement framework for media diversity in Australia, a framework which is not tied to legacy regulation and so does more than take account of commercial television, commercial radio and major newspapers. We can then conduct a baseline survey of existing levels of media diversity in Australia, and monitor diversity levels over time. As part of this approach, we introduce our prototype Public Affairs Classification Tool, newly developed software that separates public affairs content from non-public affairs content, providing a snapshot of the effects of combining certain media sources within a market.
2. Introduce a public interest test for media mergers that assesses whether a particular combination of media groups will benefit audiences in terms of the provision of public affairs content in the markets if the transaction were to proceed, and if not, the level of harm that could occur. This public interest test would be applied as part of media regulation, not competition law.
3. Link the promotion of media standards to the broader question of media diversity by recognising that it is time to address the fragmented environment under which different news sectors apply a variety of rules about accuracy, fairness, protection of privacy and handling conflicts of interest. In a world with no restrictions on cross-media ownership, we need a standards scheme that applies across media types, and also across platforms.

These proposals would represent practical, easily achievable, if partial solutions to some of the problems under your consideration. Our submission is not a comprehensive response to all the issues which need to be addressed to support the growth of media diversity in Australia, many of which, we note, have been described in the 'Speaking up for Journalism' submission to this inquiry. It does not, for example, address aspects of government and other financial support. We defer to the work of our colleagues at the Public Interest Journalism Initiative on this aspect, as we defer to our colleagues at the Digital News Research Centre at the University of Canberra (publishers of the *Digital News Report*) on current consumer attitudes and values towards news media.

Our approach is more regulatory in nature. This means the submission does not follow the terms of reference in the order presented by the Committee. However, we acknowledge that the existing TOR cover some important aspects of media diversity in Australia, and so in our comments below we note any specific points of intersection.

It is also important to state that several authors of this report have been involved in the recent research program by the Australian Communications and Media Authority (ACMA) around media diversity and localism. The recent report by the ACMA *News in Australia: Diversity and Localism – News Measurement Framework* is an important contribution to this field and we agree with the ACMA that an evidence base is needed so as to progress government policy. This follows similar work being done by the EU, US and UK. Furthermore, if the aim is to ensure the provision of quality democracy-serving news, there is solid evidence for the importance of combining diversity and localism concerns. As we note below the ACMA's framework has the potential to be world-leading.

1. Measure, audit and monitor media diversity

Terms of reference a) and i)

a) the current state of public interest journalism in Australia and any barriers to Australian voters' ability to access reliable, accurate and independent news

i) the role of government in supporting a viable and diverse public interest journalism sector in Australia

In brief, we propose the following:

- A plurality/diversity measurement framework that takes into account cross-market audience share in online news markets as well as traditional markets (TV, radio, newspaper). This framework needs to include various methodologies that uses quantitative measures of reach and consumption, and qualitative data on the wider media agenda impact. As a necessary but insufficient measure of media diversity, ownership and control would be monitored and the existing caps on commercial television and commercial radio licences would be maintained, but ownership and control would be complemented by more sophisticated measures of diversity.
- Regular reviews by an independent regulator to evaluate relevant thresholds based on these cross-media market audience shares. These thresholds would be actively monitored to guide intervention and remedies aimed at promoting a diverse media ecology at the national and local level including in relation to public service media provision.
- News distribution on digital platforms/intermediaries should be taken into account in assessments of diversity, including the impact of algorithms on news brand availability (and the public affairs content of those brands). Using appropriate metrics, this kind of monitoring by an independent regulator – the ACMA – would assess whether platform algorithms are favouring particular news providers and voices over others.

Measurement framework

We are working on a metric as part of the Media Pluralism Research Project, but in the meantime we note the issues paper released by the ACMA, which progresses this topic to a point not seen before in Australia. Indeed, its combination of localism with diversity means it has the potential to be world-leading. We commend the ACMA for its exploration of this topic and suggest the Committee endorse the ACMA's attempt to develop a measurement framework.

The tools for measuring media diversity are not yet available in Australia. As a first step in identifying the sources that really count for media diversity, we have been developing a tool that identifies Public Affairs (PA) content and Non-Public Affairs (NPA) content.

Identifying 'public affairs content'

One of the main aims of our research project is to find ways of measuring media pluralism that are relevant for a multi-platform news ecosystem in Australia. In brief, the concept of 'public affairs' allows us to separate (and measure) the kind of content that contributes to media pluralism: that aspect of news media which constitutes a public good and for which the business model is in a state of crisis.

Classifying content as 'public affairs' is therefore a mechanism for identifying material that might be the subject of regulatory intervention, but it could also be used for public subsidy or philanthropy. It

avoids the traditional distinction between 'hard news' and 'soft news', which can be useful when material that is usually seen as soft news has a public affairs angle. For example, a sports article might be about health, the need for public funding or corruption in sport. Even articles apparently about celebrities can have some kind of social function. It also avoids the need to distinguish between 'news' on the one hand and opinion/comment/analysis/current affairs on the other.

Making a distinction between public affairs and non-public affairs content is not meant to suggest non-public affairs content has no value – it might, for example, be important in maintaining a sense of community – but it does allow us to identify material that is part of news media's role in contributing to government, public administration and civic life in a democratic society. Again, media more broadly contributes to other areas of life – for example, Australian television drama programs contribute to Australia's cultural life, while children's programs contribute to childhood learning – but the target of subsidies and other interventions in relation to news is this public affairs purpose. Importantly, this content must be provided by news media organisations that employ professional journalists, with some established presence (for example, at least 12 months operation), and possibly some qualifying threshold level of public affairs content. Book publishers, bloggers and others create content that deals with public affairs would be excluded. This project seeks to support news media which demonstrates additional features such as immediacy, verification of sources and trained journalists working to professional standards.

We define public affairs (relative to non-public affairs) in the following way:

Public affairs reporting conveys timely factual and opinion-based information about events and issues in government, politics, business, and public administration. This will include education, health, science and other matters that have broad social significance. Examples are items that cover contentious public debates on climate change, immigration, and land use.

Non-public affairs reporting conveys timely factual and opinion-based information about topics of entertainment, arts and culture, leisure and lifestyle. This will include sport, well-being, fashion, and music. A sports article that just gives sports results or commentary, for example, will be non-public affairs, unless it has a public affairs angle such as government funding or health concerns.

We consider PA journalism to be different from 'public interest journalism', although the two often overlap. Public interest journalism is often used in general conversation to mean different things. It is sometimes seen as a narrow concept (in the sense of investigative reporting) while other times it is seen as expansive. For example, in their response to the Draft News Media Bargaining Code, the Public Interest Journalism Initiative and the Judith Nielsen Institute for Journalism and Ideas offered a more expansive definition, saying public interest journalism 'builds communities and fosters democracy by facilitating public discussion, ensuring diversity of voice, providing open justice, holding public power to account and providing accurate and reliable information'.

'Public affairs content' might be seen as sitting in the middle of these narrow and expansive definitions, but in essence it is any content, produced by a news media organisation, that has some public affairs angle. In the example given above, it would cover an article that is largely about sports results if the article also dealt with the lack of suitable facilities at a sports ground. While such a report is included in some definitions of 'public interest journalism', it is excluded from others. We recognise that these definitions are still in development and over time they may coalesce further.

One quality the PA designation does not recognise is originality. This is, however, addressed in the measurement framework released for comment by the ACMA. The ACMA's framework consists of eight indicators formulated after reviewing best international practices; these performance indicators take into account news infrastructure, news content and news engagement. In this respect, the ACMA's proposal is more comprehensive than our proposal for a PA/NPA tool; our tool could generate data insights to be deployed in the context of the ACMA's framework or something similar to it.

Classifying 'public affairs content'

The Media Pluralism Project has worked with data scientists from Sydney Informatics Hub at the University of Sydney to develop a computational tool that allows us to collect the content from the homepages of news websites and to analyse it for its public affairs content. We are working on other functions for the tool in order to provide a richer picture of media diversity, but for present purposes, the Public Affairs/Non-Public Affairs function is most relevant.

The dataset we are working with for the prototype version of the tool is the entire data scrape of the homepages of the top 20 news sources as identified by Roy Morgan Single Source News data.¹ The time frame was across three months in 2019, when the Australian Federal Election was underway. We currently have four cross sections of the data: six-hourly, daily, weekly and monthly. The tool algorithmically classifies the content into public affairs and non-public affairs. It provides a proportion of the total number of articles that are considered public affairs for each publication.

The MPP classification tool also analyses the topics available in any given set of media outlets. The tool provides comparative data and will return the results as a percentage of the total topic across the entire dataset. Users of the MPP dashboard can select/remove topics of interest and can download a PNG of the graphs that are generated.

Figure 1 below is a modelled representation of one of the outputs of the tool, allowing us to visualise relative public affairs content using one of the timeframes (eg daily, weekly) averaged across the three month span of the source data. Each block represents a different news source. Figure 2 shows a comparison of the proportion of news topic categories available in selected media publisher groups or between specific online news titles.

¹ See, for example: <http://www.roymorgan.com/findings/7595-top-20-news-websites-march-2018-201805240521>.

Online News Public Affairs Proportion - Weekly

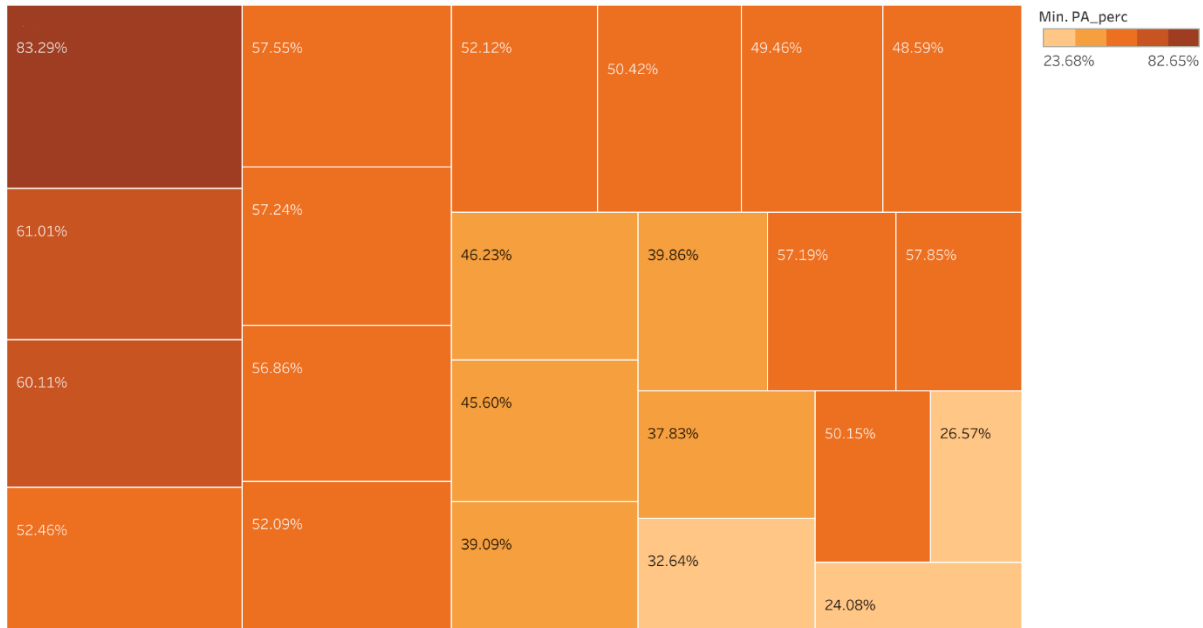


Figure 1, Weekly Representation of Online News Public Affairs Proportions – Model Only

Topics distribution by groups of publishers

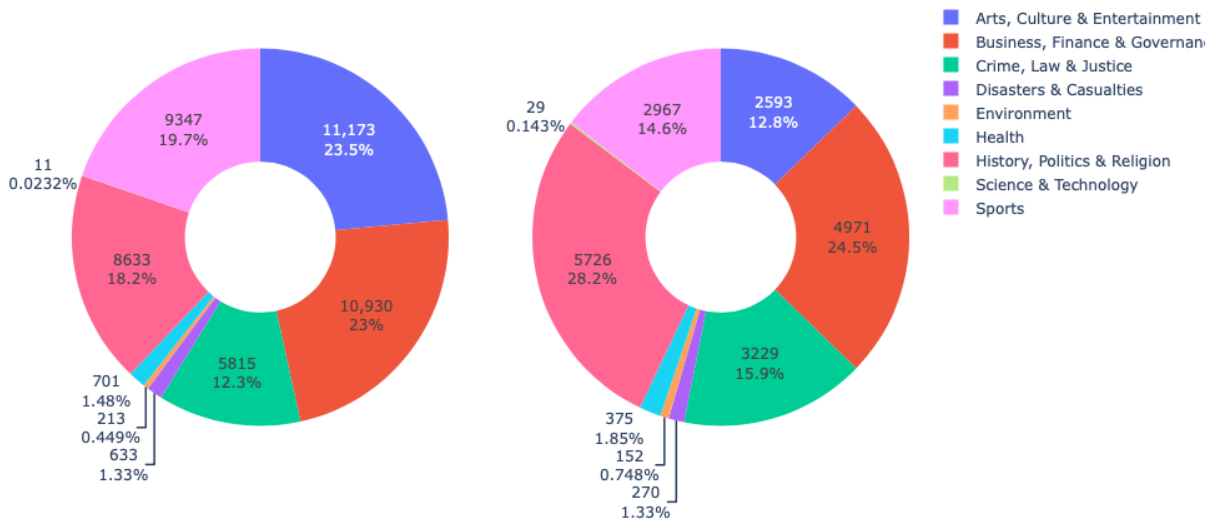


Figure 2, Comparison between Publisher 1 and Publisher 2 using topic categories on MPP Dashboard

How and when to apply a plurality test²

The UK regulator, Ofcom has a statutory responsibility to review media ownership rules at least every three years. Similarly, in the US, the FCC has a statutory responsibility to review media ownership rules every four years.³

While these reviews assess the operation, effectiveness and relevance of the rules, not the state of plurality per se, Ofcom has conducted extensive work in response at the request of government. In its 2012 advice to the Minister on measuring plurality, Ofcom (2012, p. 28) responded to specific questions on how a plurality review might be triggered in the absence of a merger. Ofcom identified two types of triggers for a plurality review outside of a merger environment, which would be able to take account of organic growth and other developments, not simply proposed transactions. These comprised:

A metric-based trigger, which would require a plurality review to be carried out if organic growth resulted in a specific metric being breached.

A time-based trigger, which would require a plurality review to be carried out automatically on a periodic basis.⁴

For reasons that include the difficulty of developing a metric-based trigger and the additional certainty provided to industry participants through the use of a time-based metric, Ofcom favoured the latter. This position was echoed by the House of Lords Select Committee on Communications in its report on media plurality, which recommended a statutory periodic review by Ofcom every four to five years.⁵ Finally, in its own consultations on the development of a measurement framework, the Department of Culture, Media and Sport explicitly recognised the need for a ‘baseline market assessment of media plurality in the UK’.⁶

In its recent issues paper, the ACMA has also raised the idea of baseline survey of media diversity and asked how further reviews might be conducted. We are preparing input on these points and recommend the Committee consult the ACMA on its work. Researchers from the Media Pluralism Research Project were part of the academic stakeholder group participating in the ACMA’s News Diversity Project. The two projects’ objectives overlapped in numerous ways; both are centrally concerned to develop new approaches to measure media diversity that were in alignment with current and, potentially, future online news media ecosystems. Both projects also reviewed existing international measurement systems and consulted with policy experts in relation to their strengths and weaknesses.

² This section is largely drawn from the CMT’s research report (*The Impact of Digital Platforms on News and Journalistic Content*) commissioned by the ACCC for the Preliminary Report in the Digital Platforms Inquiry. See pages 117-19.

³ The UK responsibility is found in section 391 of the *Communications Act 2003* while the US responsibility is found in section 202(h) of the *Telecommunications Act 1996*.

⁴ See Ofcom 2012, *Measuring media plurality Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport*, 19 June, Ofcom, London, 28.

⁵ Select Committee on Communications 2014, *Media Plurality - 1st Report of Session 2013-14*, House of Lords, The Stationary Office Ltd., London, 54.

⁶ Dept for Culture, Media and Sport (UK) 2014, *Media Ownership & Plurality Consultation Report: Government response to the House of Lords Select Committee on Communications Report into Media Plurality*, DCMS, London, 7.

2. Apply a public interest test for media mergers

Terms of reference c) and i)

c) the impact of Australia's media ownership laws on media concentration in Australia

i) the role of government in supporting a viable and diverse public interest journalism sector in Australia

In brief:

- In the event of mergers between media organisations an independent regulator should be able to apply a public interest test to assess whether the particular combination of media groups will benefit audiences in terms of the provision of public affairs content in the markets if the transaction were to proceed.

Much of our thinking on this aspect draws on the framework used in the UK where a public interest test is applied to media mergers by the media regulator, separately from the competition test applied by the competition regulator.

In our view, a fundamental flaw in the Australian regulatory arrangements is the reliance solely on outdated caps on ownership of commercial television and commercial radio licences. Schedule 1 of the *Broadcasting Services Act 1992* is a sophisticated scheme for assessing who is in a position to exercise control of licences, newspapers and companies, but, with the repeal of most of the ownership and control rules, it has almost no work to do. In a globalised media environment where digital platforms are prominent distributors of news content, media mergers need to be assessed in relation to their effect on sources that matter.

The UK model⁷

The UK media regulator Ofcom and its predecessors have long held responsibilities for monitoring and regulating media ownership and control. Aside from Ofcom's decisions on media ownership laws, in 2003 plurality became a 'public interest consideration' included in the *Enterprise Act 2002*.⁸ This meant that in certain media merger assessments the Secretary of State could ask either or both the broadcasting regulator (Ofcom) and the competition regulator (now the Competition and Markets Authority) to report on the potential effects of a merger on media pluralism.⁹

Although newspapers and broadcasting services are treated separately, in both cases there is a core test for a 'sufficient plurality'. For newspapers, this is (where reasonable and practicable) 'a

⁷ This section is largely drawn from the CMT's research report (*The Impact of Digital Platforms on News and Journalistic Content*) commissioned by the ACCC for the Preliminary Report in the Digital Platforms Inquiry. See pages 117-19.

⁸ Section 58 sets out the public interest considerations, while sections 42 and 67 give the Secretary of State the power to issue an 'intervention notice' or a 'European intervention notice' respectively if one or more of the public interest grounds in section 58 is activated.

⁹ In a recent matter, the CMA (2018) explained that it takes Ofcom's framework as 'an appropriate starting point' (p. 97) in the plurality analysis; however, it notes that there is limited external guidance on the subject and that the framework does not establish a benchmark for what is a 'sufficient' level of plurality (p. 13). See Competition and Markets Authority, *21st Century Fox, Inc and Sky Plc: A report on the anticipated acquisition by 21st Century Fox, Inc of Sky Plc*, May 2018.

sufficient plurality of views' (s 58[2B]), whereas for radio and television it is 'a sufficient plurality of persons with control of the media enterprises serving that audience' (s 58[2C][a]). And in a demonstration of the ways in which plurality, quality and standards are interwoven, the Secretary may also issue an intervention notice in relation to: accurate presentation of news and free opinion in newspapers (s 58[2A]); a wide range of broadcasting services 'of high quality and calculated to appeal to a wide variety of tastes and interests' (s 58[2C][b]); and a genuine commitment to broadcasting standards (s 58[2C][c]).¹⁰

'Reform' means more than repeal

A public interest test of the kind we describe above could, in theory, provide sufficient protection to allow the repeal of the 5/4 minimum voices rule (ss 61AG and 61AH of the Broadcasting Services Act), which works to prevent further 'unacceptable media diversity situations' arising. It is based on a points scheme in ss 61AB and 61AC (established by way of the Register of Controlled Media Groups) that applies a floor of five points in metropolitan licence areas and four points in regional licence areas, after which transactions resulting in further concentration are prohibited. It is a blunt tool that gives the same value – one point – to a local newspaper and a radio station offering largely syndicated programs or even racing radio services. In the absence of a more sophisticated mechanism for regulating diversity, it does serve a function, but a better public policy approach would regulate the sources that matter. However, there would need to be careful analysis of the application of a public interest test before the minimum voices rule is removed.

In contrast, the licence caps in sections 53 and 54 of the Broadcasting Services Act must remain (in most cases, that means a limit of one commercial television licence in a licence area and two commercial radio licences in a licence area). These rules provide the foundations of structural diversity in major Australian commercial media operations. The one licence TV cap ensures that in most licence areas in Australia there must be at least three commercial media organisations.

Accordingly, we urge the Committee to reject the proposals advanced by the 'Save our Voices' campaign, launched by the three regional broadcasting networks with Australian Community Media. Their campaign seeks the removal of the one-to-a-market cap on commercial television licences. However, broadcasting law no longer stops mergers between local newspapers, television and radio, and neither does it regulate ownership of online news sites or other digital media, pay TV or national newspapers. In the concentrated Australian media market, there must be an alternative to further concentration in regional Australia that would result from the implementation of the Save our Voices proposal. And even apart from our own objections to this proposal from Save our Voices, the ACMA's issues paper, combining media diversity with localism, presents an opportunity to think through these connected issues. Any change to legislation would undermine the potential outcomes of the ACMA's work.

¹⁰ In the UK there is also a 'fit and proper person' test which applies to the holders of broadcasting licences: Broadcasting Act 1990 s3(3) and Broadcasting Act 1996 s3(3). This test is more far-reaching than Australia's 'suitable licensee' test at section 41 of the BSA. This test has been applied by Ofcom in recent matters.

3. Media standards

Term of reference a)

a) the current state of public interest journalism in Australia and any barriers to Australian voters' ability to access reliable, accurate and independent news

In brief:

- The current fragmented media standards schemes should be consolidated into a single cross-platform scheme administered by an industry body with an independent complaints handling role. The scheme could be supported by digital platforms, as key distributors in the contemporary media ecosystem.

Media diversity is inextricably linked with media standards; we cannot hope to foster a news media landscape exhibiting sufficient diversity without addressing the underlying issue of media standards such as accuracy, fairness, protection of privacy and handling of conflicts of interests. Media standards seek to create an ethical and equitable news media landscape.

Currently in Australia, news media standards schemes are more fractured than coherent. The current system of codes and principles involves no fewer than fourteen sets of standards about aspects such as accuracy and fairness.¹¹ We propose that all businesses involved in the news process be subject to a single, consolidated news media standards scheme as a way to foster confidence in authoritative sources of news and information. This need not mean the same rule for all participants – there could be certain minimum standards and opt-in arrangements for higher standards – but all participants would be subject to the same core obligations and the same, independent industry-based accountability mechanism.

On current arrangements, news media businesses are generally subject to one of several codes of practice registered under the *Broadcasting Services Act 1992* or the codes developed by the national broadcasters under their own Acts of Parliament; or else they are fee-paying members of the Australian Press Council. In our view, standards schemes ought to be consolidated. This would involve a single, independent destination for consumer complaints. The scheme needs to be external to the news organisations, rather than relying on in-house ethics or standards. In this respect, we have serious reservations about the 'professional standards test' to apply as part of the proposed News Media Bargaining Code, as s 52P(1)(a)(iv) of the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 allows for 'internal editorial standards' without the presence of any external complaints mechanism.

This kind of cross-media standards scheme could then be supported – financially, and in other, algorithmic ways – by the digital platforms that are major distributors of news content in Australia. This does not mean that platforms should be regarded as publishers but – as key players in the media environment – they could contribute in various ways to the distribution of reliable content produced under a common standards scheme. Facebook has itself proposed (in its submission to the ACCC re the development of a news media bargaining code) an Australian Digital News Council. While this would not be the same as the standards body we are proposing, there is significant

¹¹ See *The Impact of Digital Platforms on News and Journalistic Content*, p.88.

overlap, and it is encouraging that Facebook has said it would consider financially supporting such a single news media standards scheme, partly because it is unlikely that Australian news providers alone would have the capacity to fund an enhanced and expanded industry scheme.

A consolidated set of standards recognises the reality of how businesses are presently structured, across platforms. The removal of Australia's cross-media rules in 2017 may well have been a required reform in the face of global competition; but (as the CMT noted in 2018) the implementation of uniform standards that apply the same rule about accuracy wherever the content appears is a logical and necessary next step. The benefits of a uniform scheme would enhance Australian voters' ability to access reliable, accurate and independent news by providing a single destination for consumer complaints and recognising that platforms are firmly established in the news ecosystem, and that they have responsibility for the way in which news and journalism, as public goods, are treated. Furthermore, it would have the advantage over alternative approaches in that it would not treat platforms as publishers.

There are many benefits to be had from a single scheme for news reporting standards, a single destination for consumer complaints, and a system where outcomes are based on publicising both lapses in journalistic standards and those cases where careful consideration comes down on the side of the public interest in fair, accurate and open reporting. These benefits, we suggest, would go a long way towards fostering a more healthy news media environment, especially when public policy struggles to achieve greater levels of structural diversity.