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Australia Together

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

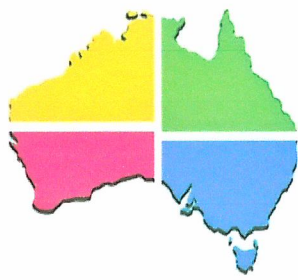
Senate Committee hearing - 1 February 2021

**Address by Dr Bronwyn Kelly
Founder Australian Community Futures Planning**

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**Senate and Economics Legislation Committee
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**Address by Dr Bronwyn Kelly
Founder Australian Community Futures Planning**

Thank you for the opportunity to address the Committee. It is a great privilege to be here. I would like to begin by acknowledging the Ngunnawal people, traditional custodians of the land on which we meet today, and pay my respects to their Elders past and present.

Australian Community Futures Planning has made submissions to this Committee and to the Senate Committee inquiring into media diversity in Australia. Both submissions are largely about the News Media Bargaining Code and the impact of its mandatory provisions on the prospects for a healthy diverse public interest journalism industry in Australia. They are both about the vital role and future of journalism in democracy. I'm the founder of Australian Community Futures Planning and I'm also an Honorary Fellow at the University of Technology Sydney's Institute for Public Policy and Governance. I was a member of the Senior Executive Service in State and Local Government in News South Wales for thirty years. Of particular relevance is my experience in operation of and equitable access to monopoly infrastructure (in my case, water infrastructure). So I have deep experience of implementing Australia's competition policies and principles. I'm bringing that experience to bear here because I am sure that this is a big turning point for Australia's democracy. We can make it or break it with legislative decisions in this area.

ACFP acknowledges that the ACCC has designed the News Media Bargaining Code with the objective of supporting journalism vital to a healthy democracy. But we submit that the **mandatory** Code as drafted will fail to meet that central objective. As author of scholarly works in this area, I agree that a healthy journalism industry with sustainable financial prospects is vital for democracy. But somewhere along the line it seems that the **key** objective got lost. The question of how we maintain support for the high quality independent journalism that in our post-truth world is more vital to democracy than it has ever been has been replaced with a question of how we can support commercial journalism **businesses** regardless of whether they meet modern standards for the independent, unconflicted, detached, factual reporting that's vital to democracy. Perspectives about how to support **diversity** in public interest journalism also got sidelined. And then, as supporting commercial journalism **businesses** became the sole focus, people stopped testing whether the suggested solution – in this case the News Media Bargaining Code – would actually lead to a stronger democracy.

In this submission I'm suggesting that when you put open democracy front and centre as your selection criteria for distinguishing a good code from a bad one, you start to come up with different answers about how to structure the news industry on a sustainable financial footing and how to do that without lessening competition, without unlevelling what is currently a neutral playing field for new entrants, and without reducing both diversity and quality in journalism.

In short, I'm submitting that the Code – when it switched from being voluntary to mandatory – unlevelled that playing field. It also declined into something solving a problem that actually doesn't exist. Quality independent journalism is not in crisis. It is not under threat in the digital age. On the contrary, good financial prospects have opened up and will continue to grow for quality public interest journalism *because* of the way the net has been organised as an open platform. People are clamouring for quality journalism and they are able to find it because of the digital age. Journalists are also able to produce it and distribute it far more cheaply. This view runs counter to much of what you have been told and what the bigger commercial news businesses have claimed. But when the Code became merely an attempt to solve the problems of some big private news businesses, it lost its way.

Structured as it is now it is not solving – and indeed cannot solve – the real problems that democracy is facing in the digital age. Nor will it solve the financial sustainability problems of the decaying mainstream news businesses that persist in operating on non-digital platforms of print, TV and radio.

Why do I suggest the Code will fail on all these objectives? I'll offer three key points and I'll get through these very quickly so we can get to the real problem and some possible solutions to that.

Point 1: Australian Community Futures Planning is asserting that as decision makers you haven't been given the benefit of information about the actual state of the news market and the prospects for financial viability of quality journalism. There is no evidence journalism itself is in peril.

One key piece of misinformation is that public interest journalism is facing an existential crisis and that Google and Facebook are the cause of this supposed crisis. The fact is there is no crisis for digital news – only for news delivered on non-digital platforms, particularly print and TV. The digital platforms are where news business opportunities have been opening up – big time. And the fact is that the crisis for news on non-digital platforms is not the fault of Google and Facebook – never has been. Nor can any digital search or share platform – like Google or Facebook or Bing or Twitter or any of them – fix a problem in the non-digital part of the news market, no matter how much money you compel two digital platforms to throw at the non-digital news platforms. The trick with this legislation if you proceed with it will be to figure out how search and share platforms can help journalism in the only place they can help them and are helping them – and that's in the digital realm. It's not physically possible for them to help traffic business – or advertising revenue for that matter – to a print newspaper. And it's not viable for the two digital platforms to pay for the privilege of linking customers to their news sites. That's like saying that in the old days of print journalism the trucking industry or the local paper boys should have paid the news businesses to distribute their papers.

Non-digital news businesses are in decline and that's hard. But there is a choice wide open to them to step into a sustainable financial future if they shift to business models that suit digital age delivery and if we give them a bit of help. And the offer is there from Google, Facebook and myriad other digital players to help them to succeed as well. Where they are making the choice to shift they are doing well.

Point 2: You also have been told that there is a bargaining power imbalance between the news businesses and Google and Facebook. But the evidence about bargaining power balance doesn't really indicate an imbalance, certainly not one held by Google. The ACCC's own data does not support its conclusion about the bargaining power imbalance, as you can see if you browse the kit. If the supposed imbalance derives from Google being an "unavoidable trading partner", as the ACCC says it does, then there is no imbalance because as I show in the kit the ACCC's own data indicate that news consumers chase their news far more without the assistance of Google than they do with it.

Nor do the financial results of some of the news businesses who've entered the market via digital platforms provide evidence that any imbalance that might be present is working against the success of those new entrants. On the contrary, those results show slow but steady growth for several news businesses in total revenues over the last five years *if* they're working to transition across to business models that suit digital delivery of news. I cite The Guardian's financial statements. These indicate clearly that what they've lost in advertising revenue has been more than offset by what they've gained in revenue direct from readers who found them via links on the web. In fact they've only lost half as much in advertising revenue as they've gained in reader revenues. And as they've been able to slowly unleash themselves from advertising dependency, they've gained independence – which is precisely what you want them to gain if you're intent on building a healthy democracy.

It's a rough road but quality journalism has good prospects in the digital age. People are clamouring for it and it sells well. New entrants have been able to enter the news market and succeed because of the internet and you've received submissions from those new entrants which credit Google and Facebook as having helped these diverse businesses enter and stay in a market they could never have entered in the past. They're succeeding and this would strongly suggest that if there is some sort of bargaining power imbalance, it is not negatively affecting diversity in journalism in the digital sphere. It's positively encouraging a diversity of competitive players.

So to recap points 1 and 2 – journalism is not in the trouble you've been told, and the non-digital news businesses that are in trouble are not in trouble due to a bargaining power imbalance held by Google and Facebook. A Code designed to correct an imbalance that doesn't exist is pointless. Worse: it will turn the current information market that is structured to help independent news businesses and journalists to compete into a market with more barriers to entry for them.

And Point 3: The Code as designed will also fail because of the arbitrator's formula for calculating what must be paid by Google and Facebook to between 100 and 200 Australian news businesses. All the notionally available money from Google and Facebook's profits will be eaten up by the big news businesses before the smaller ones even get a look-in. The formula is so over-the-top that it leaves the two targeted digital players with no option but to depart the market. For them it's a commercial reality that if they are going to lose all control over what they have to buy from news businesses, all control over the cost of supplying services, and all profits then they must depart the market. In killing the goose expected to lay the golden egg the formula fails news businesses before it starts. It simply won't work. And it doesn't help to characterise Google and Facebook as the culprits or as bullies. The real threats here started with the conversion of the code to a punitive, mandatory anti-competitive instrument. Say what we like about Google and Facebook being too big, it doesn't help if we simply help big news players behave in uncompetitive ways in the information market. It certainly doesn't help democracy if we devise a Code that re-builds barriers to entry for smaller news businesses.

But if the Code won't solve the real problems of democracy, how can we help journalism play its part in achieving what was the ACCC's original key objective – the objective of a stronger, open democracy?

OK – in the kit I have suggested a dozen things. Taken together these things can do far more to support quality independent journalism in our democracy than this mandatory Code. ACFP would suggest we don't need the Code at all but if you think we do then one option is to revert to a voluntary Code but **alongside** the sort of policy initiatives I've suggested. The ACCC has obviously acknowledged the value of voluntary negotiations because this revised draft of the Code now provides for voluntary deals. Good. Sadly for the news businesses that doesn't give them as much as they were hoping for. Personally I'd argue they don't need more. But if you think they do then I'd point you to no. 11 in the list of 12 steps to help journalists play their part in supporting a strong, open democracy. That eleventh option goes some way towards acknowledging the protest by some that public interest journalism is a public good and should be publicly funded. No. 11 offers a framework in which it might be justifiable for taxpayers to fund quality independent public interest journalism by private sector news businesses and journalists; but this will only work if it's done alongside the other reforms.

If you choose to desist with the Code entirely, I think it will free up your time to think about how Australia can be a world leader in establishing a fair and ethical framework for regulation of a digital age information market. I've made a detailed suggestion about that in ACFP's submission to the Senate Inquiry into Media Diversity so I'll refer you to that other submission.

The 12 suggestions made in the kit may not all be to the Senate's taste, although as a combination I'd submit that they could make a marked difference to the health of our democracy.

Thank you for inviting me to speak.

Disclosure

Dr Bronwyn Kelly does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this submission. She has no relevant affiliations beyond her academic appointment and her office as the Founder of Australian Community Futures Planning.

About Australian Community Futures Planning

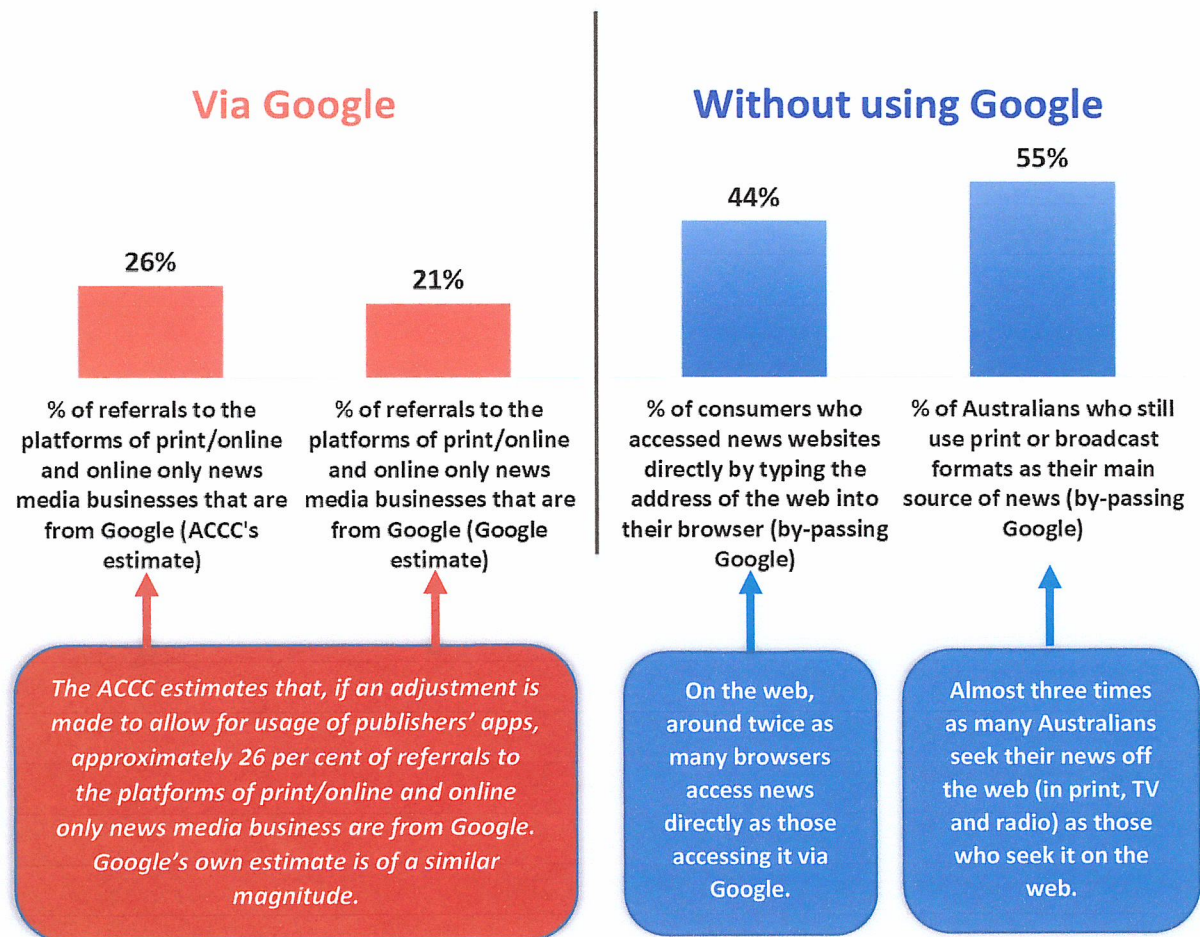
ACFP was founded in March 2020 for the purpose of encouraging greater participation by Australians in planning their own future as a nation within a 21st century democracy. It is an independent centre of excellence in national community futures planning, providing an organising framework that can enable any and all Australians to increase the chances of improving our entire quality of life – our society, our environment, our economy and our governance.

Australian Community Futures Planning has no affiliation with any political party inside or outside Australia. It receives neither political party nor other funding. All output from ACFP is produced by in-kind contributions of volunteers.

Are Google and Facebook unavoidable trading partners for news businesses and do they have a bargaining power imbalance?

The ACCC did not demonstrate in its Digital Platforms Inquiry Final Report that Google and Facebook were in fact “unavoidable trading partners” for Australian news businesses. Their own data proved that the opposite is more likely to be true – Google and Facebook are easily avoidable trading partners and in fact are avoided more than they are used. Insofar as Google is not an unavoidable trading partner for news businesses, it does not hold a bargaining power imbalance over them.

How do Australians access their news?



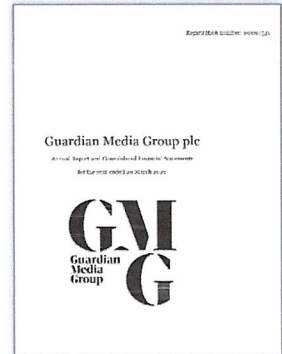
Data sources:

- Australian Competition and Consumer Commission, “Digital Platforms Inquiry Final Report”, June 2019, pages 101 and 290 <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>
- Google Australia, Digital Platforms Inquiry Submission in Response to the ACCC's Preliminary Report, 18 February 2019, page 32 <https://www.accc.gov.au/system/files/Google%20%28February%202019%29.PDF>

Are news businesses suffering because of digital platforms?

Not if The Guardian is anything to go by.

The Guardian Media Group's financial revenues have been rising slowly but steadily due to their decision to provide news via digital platforms with the assistance of search engines and share platforms such as Google and Facebook that provide links between readers and The Guardian's news.

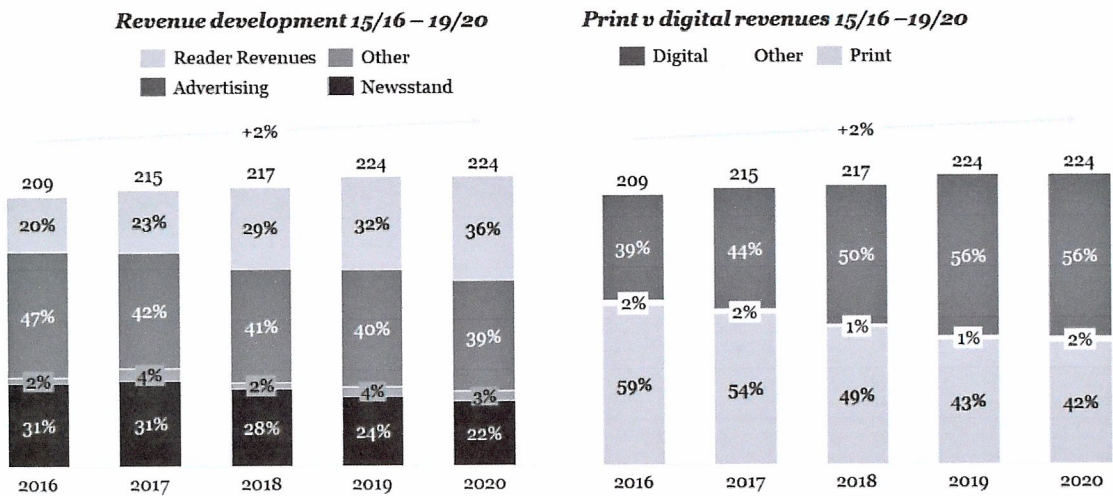


Results below show that:

- The Guardian's total revenue is up by 2% over five years.
- The Guardian now makes more from digital news than from print.
- The Guardian's lost advertising revenues have been more than offset by increases in reader revenues:
 - Drop in advertising as a proportion of total revenue = 8%
 - Increase in reader revenues as a proportion of total revenue = 16%

Guardian Media Group plc

Strategic Report



Source: Guardian Media Group plc Annual Report and Consolidated Financial Statements March 2020

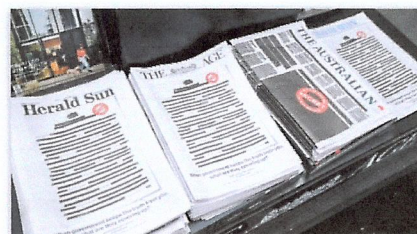
https://uploads.guim.co.uk/2020/07/15/1_GMG_Financial_Statements_2020_FINAL_pdf.pdf

Twelve steps to help journalists play their part in supporting a strong, open democracy.

1. Make FOI applications easier and cheaper

- Cease knocking federal FOI applications back at unprecedented rates and redacting large slabs of material without accountability.

Stop the wholesale redactions and refusals of FOI applications.



2. Develop and maintain real time transparent registers of lobbying and political donations

- Save journalists the trouble of having to develop their own "Citizen's Transparency Hubs".

The Guardian shouldn't have to fund a "Citizen's Transparency Hub".



3. Stop criminalising public interest journalism:

- Stop intimidating journalists from doing their job with threats of jail sentences. Journalists are supposed to hold governments to account and shouldn't be threatened or penalised simply for doing their job.

4. Lift the veil of secrecy on government misconduct

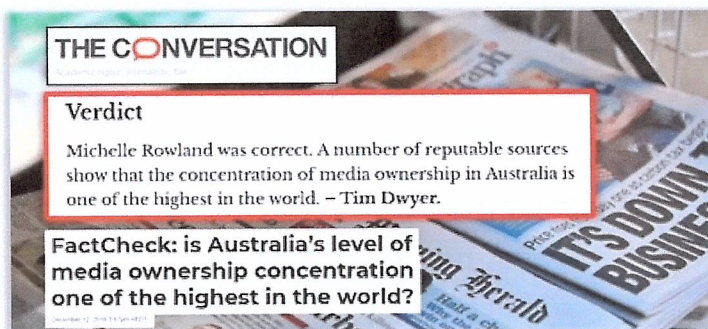
- Reverse some of the national security laws which now make it impossible to hold governments to account for any illegal behaviour in relation to classified security matters.

5. Establish a federal integrity commission

- AAP and other wire services could then afford to assign journalists to centralised corruption inquiries.

6. Reverse cross-media ownership laws

- Stop allowing one or two mega news businesses to own all three non-digital platforms (print, TV and radio) in one geographical area.

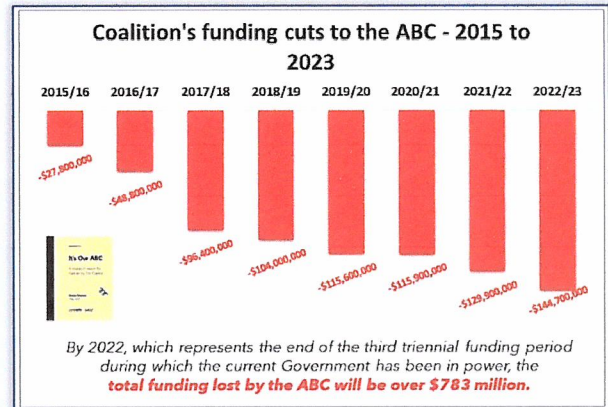


7. Develop regulations to prevent further media market power imbalances, for example, by:

- prohibiting Murdoch from disabling AAP; and
- prohibiting any news business at all from acquiring a search engine and thereby vertically integrating news production and distribution (which the Code, if it proceeds will help Murdoch do by facilitating a raid on Google).

8. Stop de-funding the main independent news agency we are lucky enough to have – the ABC:

- Stop pressuring it (via that de-funding and by raids on files and sources) into less and less editorial independence. Reinststate the \$783 million deleted from the ABC’s budget since 2015.



9. Avoid plunging news businesses into further decline in editorial integrity by deleting provisions in the Code requiring notice of algorithm changes.

- This simply provides news business with information about where clicks will come from and will narrow diversity of content.

Avoid measures which will result in editors’ designing news content on the basis of click bait.

10. Fund government agencies vital to the support of journalism:

- Ensure ACMA is resourced and independent so that it may do a better job of maintaining compliance with approved journalistic standards.
- Reverse funding cuts to the Australian Bureau of Statistics.



11. Create an Australian Commission for Independent Public Interest Journalism:

- Hypothecate the taxes paid by digital platforms and news businesses into a fund to be independently administered by the Commission as grants for quality journalism.
- This Commission could function in a similar fashion to the Australian Olympic Commission that identifies high quality athletes for receipt of grants to improve their chances at the Olympics, except that this Commission for independent journalism would have to ensure that it approves grants only to news agencies or individual journalists for news project proposals that are genuinely independent. For more information on the concept, see page 10 of this kit.

12. Commence a nation-wide community engagement process for development of a legislative framework for ethical and fair regulation of a free and open democratic information market.

- For further information see Dr Bronwyn Kelly, [*Prospects for journalism, the free information market and democracy in Australia under the ACCC's News Media Bargaining Code*](#), accessible at <https://www.austcfp.com.au/media-releases>

Prospects for journalism, the free information market and democracy in Australia under the ACCC’s News Media Bargaining Code

An essay by Dr Bronwyn Kelly
 Founder, Australian Community Futures Planning
 30 September 2020



A model for an Australian Commission for Independent Public Interest Journalism

One possible option for augmenting funds for quality journalism as it transitions from the non-digital to the digital age – and unleashes itself from dependence on advertising – is to create an **Australian Commission for Independent Public Interest Journalism**.

This could be funded by hypothecating the taxes paid by digital platforms and profitable news businesses into a fund to be independently administered by this new Commission.

Digital platforms do pay tax in Australia as does Nine (although NewsCorp reportedly pays little or no tax). But it is feasible to assume a starting fund of at least \$100 million per annum. This can grow if governments audit the participating firms to make sure they pay taxes correctly. It would also be an additional amount over and above all the other value of the links that are already being offered to news businesses for free by digital platforms. The principle justifying taxpayer subsidisation of private news businesses would in this arrangement be along the lines of:

If the news and digital platforms pay tax, put it back into support of a democratic information market.

This Commission could function in a similar fashion to, say, the Australian Olympic Commission that identifies high quality athletes for receipt of grants to improve their chances at the Olympics, except that this Commission for independent journalism would have to ensure that it approves grants only to news agencies or individual journalists for news projects that are genuinely independent.

If taxpayers are going to be put upon to fund a commercial newsagency that do not own (in the way that they own the ABC) then the news businesses will need to be held accountable for how they use any taxpayer subsidy. The Commission should be given a charter to ensure that grants meet the criteria for production of quality, independent, evidence-based journalism which is of genuine public interest benefit (i.e., it must be a genuine public good) and which cannot be otherwise produced by revenues available to the news business or the journalist. A journalism project which may not be expected, once produced, to meet the Commission's criteria as journalism advancing the public good, should be not approved for taxpayer funding. However, this should not imply that the Commission should have the power to specify preferred subjects of articles or control over final content. Interference in any content produced under an approved grant should be prohibited. Also, a paywall may not be applied to any journalism funded by these taxpayer funded grants.

The advantage of this arrangement is that it independently and without bias can support genuine public interest journalism, not frivolous journalism which contributes nothing to the democratic life of the nation.

Journalists applying for grants through such a Commission could submit proposals for all sorts of major investigative and research assignments – anything that contributes to the ability of the fourth estate to hold Australian governments to account and even inspire them through the publication of a major piece or a series of articles that are truly independent and detached.

The average salary of a journalist in Australia is \$53,288¹ and \$79,000 at the 90th percentile of the range. This means a fund of \$100 million a year would provide jobs for between 1,200 to 1,800 journalists, a considerable boost to the volume of articles qualifying as genuine public interest journalism for a healthy democracy.

¹ Source: Payscale, Average Journalist Salary in Australia. Updated 9 January 2021.
<https://www.payscale.com/research/AU/Job=Journalist/Salary>

Q&A Sheet

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1. Is there a bargaining power imbalance between Google/Facebook and the news businesses and is a mandatory Code the best way to correct that?

The ACCC asserts there is a bargaining power imbalance but this conclusion is not supported by its own data.

But assuming the ACCC's Chairman Rod Sims is correct that there is "a massive imbalance"² working in Google's and Facebook's favour, it does not follow that a mandatory Code which shifts the imbalance massively the other way in favour of commercial news businesses is a step that is consistent with competition principles or capable of creating a sustainable financial future for any journalism, let alone genuine public interest journalism.

2. If there is a bargaining power imbalance, what is the best way to correct it?

If the objective is to correct a bargaining power imbalance (rather than reverse it and create a new imbalance), this can only be achieved by a voluntary code aimed at protecting fairness for all parties

² Rod Sims quoted in by Belinda Barnet, "Google's 'experiment' hiding Australian news just shows its inordinate power", The Guardian, 14 January 2021: *As Sims said at a Reuters conference on Tuesday: "Google and Facebook don't need any particular news media business, they need them all, but they don't need them individually. That means you have massive bargaining power imbalance."*

to that code. A *mandatory* code which swings the imbalance 180 degrees in the opposite direction is not a correction. It is simply a new market imbalance that is not fair. More to the point, is it not capable of ensuring ongoing financial sustainability for either the news businesses or Google and Facebook. And it does not guarantee that more public interest journalism will be produced at all.

3. Is the News Media Bargaining code unfair?

Yes. Any regulatory bargaining instrument is unfair if it mandates that:

- one side shall pay the other side's costs of production and distribution and yet be unable to claim credit for the costs they incur in providing service to the other side;
- one side shall be paid by the other side for content that the other side is not seeking to acquire and will in any event not acquire the property rights to;
- one side shall pay to provide service to the other side and shall not be paid at all for services it provides;
- one side has no say in what it must provide and pay for and no ability to refuse service;
- one side, inasmuch as that side cannot refuse to provide service, must accept commercial loss or vacate the market entirely.

4. Is the News Media Bargaining Code anti-competitive?

Yes. Inasmuch as the Code unlevels the playing field for entrants and adversely affects competitive neutrality for all, it is anti-competitive.

The web, and our access to it, is currently arranged to facilitate entry for sellers and access for buyers, without discrimination. Everyone enters voluntarily on the same terms (i.e., for no cost) and there are no barriers to entry. The Code would provide favourable terms of entry for news businesses, removing the level playing field for every other information provider, regardless of the comparable quality of content being produced by those who are paid to enter and those who cannot be paid. Indeed it could encourage an explosion of poor quality content by news businesses.

The Code is also highly anti-competitive insofar as it forces search engines to provide news businesses with preferential access to advertising revenues available in the online information market. With the aid of marketing information that others cannot gain, the news businesses can strip mine the available advertising revenues before their new competitors get a look-in.

5. Are the requirements for notification of changes in algorithms feasible?

As the Code is structured, it is not mandating that algorithms themselves be handed over. However, designated digital platform corporations must explain, in readily comprehensible terms, how a planned change to an algorithm or "internal practice" may be likely to affect referral of traffic to a news business's covered news content.

Effectively this requires Google to divine how each news business's particular type of content may be pushed up or down in rankings by a planned algorithm change. Google would need divination powers beyond the oracles to analyse and isolate all the types of content produced by news businesses, distinguish between them, and then relate that back to one of zillions of algorithm changes. This is not feasible.

6. Is notice of algorithm changes a good thing for generation of quality public interest news content?

No. News businesses may be under the impression that if they get access to the algorithms, or notice of the effect of a change in an algorithm, they will have the market research necessary to redesign their content so that it attracts the most clicks and therefore the advertising. That is particularly dangerous for democracy. If news content is determined on the basis of clicks then Australians will be reading narrower and narrower subjects in the news. That surely defeats the objective of a healthy democracy.

7. Should advertising fund public interest journalism?

Preferably, no. Accepting advertising revenues exposes news businesses to conflicts of interest. Heavy advertising dependency in a news business reduces independence in journalism almost to zero and thereby makes it financially difficult to impossible for journalists to rise above the conflict of interest and be confident they are putting the public interest ahead of private interests.

Public interest journalism should preferably unleash itself from conflicts arising from advertising dependency.

8. Do advertisers need news to sell advertising?

News content is no longer as useful for attracting advertising as it used to be. Advertising revenues that can be obtained on the internet by commercial news sites are negligible because, as the ACCC notes, Australians spend only 2.3% of their time searching and browsing the “news outlets” of Murdoch, Nine, Seven West, Ten and the ABC³ (although it is unclear how much of this time is spent in the news space of these businesses rather than the entertainment space).

They spend the other 97.7% of their time online searching and browsing the websites of independent researchers, students, academics, commercial businesses, non-profits, social media, message systems, YouTube, bloggers, podcasters, tweeters, foreign newspapers, and online retailers of goods and services – endless types and sources of content which now dwarf Australian news media.

News no longer attracts enough of the total available readership to be attractive to advertisers. And if digital platforms ceased providing links to news it would make little if any impact on their advertising revenues.

9. If advertising revenues will no longer fund journalism, what can we do instead?

Now that the internet has been structured to allow journalists to lessen their dependence on advertisers and grow their income by readership drives (and lower their costs for research and transport substantially), it is possible to consider and seize the advantages of lowering advertising dependency.

It is a good thing to unleash news from advertising dependency wherever possible. If, however, journalists need help in the business model transition, a taxpayer funded Australian Commission for Independent Public Interest Journalism may be appropriate. There are private funds that already

³ Australian Competition and Consumer Commission, “Digital Platforms Inquiry Final Report”, June 2019, page 6. <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

fund public interest journalism produced by commercial news businesses. These could be augmented by a taxpayer-funded program, as long as it could assure taxpayers that any grants from the fund were for news projects that advanced and supported transparency in democracy and that would be freely accessible to taxpayers (i.e., not placed behind a paywall).

10. Will the News Media Bargaining Code save our democracy?

No. The argument behind the Code is that democracy in Australia will not be saved unless the news media moguls get a better deal than every other participant on the web.

Democracy depends on quality, transparent impartial public interest content, not news businesses that, in return for third party or taxpayer funding, will have no extra accountability imposed upon them to cease their proliferation of sub-standard or fake news. The Code imposes no criteria for ethical compliance with codes of journalistic practice and therefore will be more likely to harm democracy than advance it. The Code has no capacity at all to save democracy.

11. If the News Media Bargaining code won't save democracy, what will?

Advancing the health and resilience of Australia's democracy will require a multi-faceted approach starting with but not limited to the list of **Twelve steps to help journalists play their part in supporting a strong, open democracy**, provided on pages 8 and 9 above.

12. Is there an argument for public funding for public interest journalism produced by the private sector?

Yes, but only if there is demonstrated public benefit in and open access to the news content being funded. News content in which there is no demonstrable benefit for the health of Australia's democracy would provide no return to taxpayers and should not be publicly funded.

Taxpayers shouldn't be put upon to fund a private business but may consider funding quality content that is genuinely in the public interest and is openly accessible.

13. Are snippets of news worth paying for?

No content is worth any more on the net than other content. And no snippet (be it in a search result for news or non-news content) is worth paying for because snippets do not constitute news content. Moreover, if the snippets weren't provided by the search engine, the link would be far less likely to be clicked on by the searchers because it would not show results for the key words they searched on. Effectively, news content has no worth in the market place unless and until it is clicked on. It is the search engines and share platforms that provide the news content with its value.

It is worth noting that the ACCC did not accept NewsCorp's submissions that the publication of snippets disadvantages news businesses⁴ and initially rejected the notion of a mandatory code.

⁴ ACCC, Digital Platforms Inquiry Final Report, page 231: "The ACCC has not received evidence that demonstrates a direct correlation or causation between the length of news snippets on Google Search and changes in referral traffic for an Australian media business or its click-through rates. ... The ACCC is not recommending a mandatory licensing regime to apply to the use of snippets at this time because: the issues identified in relation to snippets stem from a wider set of issues regarding an imbalance in bargaining power, which the ACCC recommends be addressed at first instance through a code of conduct past experience in other countries suggests that the regime may not work; rather, the ACCC considers that it would be more

14. Should Google pay to provide links to news content?

No. No sensible reason has been provided to justify an arrangement where Google should pay to provide a link to a news business, or any business. Furthermore, as Atlassian has noted in its submission to the Senate:

... no other types of web sites on the Internet are paid in this way, for merely appearing in search results or on social media platforms. Legislation creating 'government-favoured' categories of web sites will only disrupt neutrality on the Internet.⁵

The concept of forcing any digital search or share platform to pay for one type of content and not another is contrary to competition principles underpinning competition law. In vital infrastructure, those enabling access to that infrastructure are required to do so on reasonable and neutral terms, not preferential terms. There is no space in Australian competition policy for subsidisation of one type of entrant over another.

appropriate for digital platforms and news media businesses to negotiate payments between themselves. This would provide flexibility to the payment model, which can be adjusted to the requirements of digital platforms and news media businesses.”

⁵ Atlassian Submission to the Senate Economics Legislation Committee – Submission 48.