

The Senate

Economics Legislation Committee

Treasury Laws Amendment (News Media
and Digital Platforms Mandatory
Bargaining Code) Bill 2020 [Provisions]

February 2021

© Commonwealth of Australia

ISBN 978-1-76093-178-0 (Printed Version)

ISBN 978-1-76093-178-0 (HTML Version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 4.0 International License.



The details of this licence are available on the Creative Commons website:
<https://creativecommons.org/licenses/by-nc-nd/4.0/>.

Printed by the Senate Printing Unit, Parliament House, Canberra

Members

Chair

Senator Slade Brockman LP, WA

Deputy Chair

Senator Alex Gallacher ALP, SA

Members

Senator Andrew Bragg LP, NSW

Senator Jenny McAllister ALP, NSW

Senator Susan McDonald NATS, QLD

Senator Rex Patrick IND, SA

Participating Members

Senator Sarah Hanson-Young AG, SA

Secretariat

Mr Mark Fitt, Committee Secretary

Dr Andrew Gaczol, Principal Research Officer

Ms Taryn Morton, Administrative Officer

PO Box 6100

Parliament House

Canberra ACT 2600

Phone: 02 6277 3540

Fax: 02 6277 5719

Email: economics.sen@aph.gov.au

Contents

Members	iii
Chapter 1—Introduction.....	1
Chapter 2— Views on the bill.....	19
Additional comments - Labor Senators	33
Additional comments - Australian Greens	39
Appendix 1— Submissions and additional information	41
Appendix 2— Public hearings.....	45

Chapter 1

Introduction

Referral of the bill

- 1.1 On 10 December 2020, the Senate referred the provisions of the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 ([the bill](#)) to the Senate Economics Legislation Committee for inquiry and report by 12 February 2021.

Purpose of the bill

- 1.2 On Wednesday, 9 December 2020, the Treasurer, Mr Josh Frydenberg MP, explained the intent of the bill:

This bill establishes a mandatory code to address the bargaining power imbalances that exist between digital platforms and Australian news media businesses...

Public interest journalism plays an important role in our society. It is critical to the functioning of our democracy. This role can only be fulfilled by a strong, diverse and sustainable Australian news media sector.

This bill responds to the key findings of the Australian Competition and Consumer Commission's (ACCC) digital platforms inquiry...

The ACCC found that digital platforms have become unavoidable trading partners of news media businesses, providing them with substantial bargaining power.

The problem is not unique to Australia, and we recognise that similar findings are emerging overseas...

We are not seeking to protect traditional media companies from the rigour of competition or, indeed, technological disruption, which we know benefit consumers. Rather, we are seeking to create a level playing field where market power is not misused and there is appropriate compensation for the production of original news content.

To that end, this bill will establish a new world-leading code of conduct for news media businesses and digital platforms.

The code ensures that digital platforms share the benefit they obtain from using Australian sourced news content with the news media businesses who create that content.

The Treasurer will be able to determine that a digital platform is subject to the code, having regard to ACCC and Treasury advice about whether a substantial bargaining power imbalance exists.

ACMA, the Australian Communications and Media Authority, would assess the eligibility of Australian news media businesses to participate in the code against criteria set out in the code.

The framework contained in the bill recognises that agreements can be entered into outside of the code. Indeed, they are encouraged to be entered into outside of the code. Where a news media business reaches an agreement with a digital platform, it can agree to not bargain or pursue compulsory arbitration under the code.

If a news media business cannot reach an acceptable agreement with a digital platform outside of the code, it will have the option to trigger aspects of the code to address the bargaining power imbalance. This includes minimum standard obligations that digital platforms must meet for all news media businesses registered under the code, requirements for good faith bargaining over remuneration and the application of final offer arbitration if bargaining between the parties does not succeed.

Should arbitration be required, both parties must each submit a final remuneration offer. Arbiters are then required to:

- consider the benefits for both parties from having Australian news content available on digital platforms; and
- take into account the cost of producing news content and whether any final decision places an undue burden on the digital platforms.

In assessing the offers made by each party, arbiters must consider the outcome that would have arisen if commercial negotiations had taken place in circumstances where the digital platform did not have a bargaining power imbalance.

The code also contains provisions to limit, as far as practicable, digital platforms' ability to avoid the code and to take retaliatory action against news media businesses for participating in the code. This includes through provisions that prohibit digital platforms from differentiating between Australian news media businesses covered by the code.

Penalties will apply to breaches of the key provisions of the code.

The ACCC will be responsible for enforcing the code and will be able to issue infringement notices with smaller fines for minor code breaches.

The code will be reviewed by Treasury after one year of operation to test the effectiveness of its operation.

The News Media and Digital Platforms Mandatory Bargaining Code is a world-leading initiative. It is designed to level the playing field and to ensure a sustainable and viable Australian media landscape. It's a key part of the government's strategy to ensure that the Australian economy is able to take full advantage of the benefits of digital technology, supported by appropriate regulation to protect key elements of Australian society. One such key element is a strong and sustainable Australian news media landscape.¹

¹ The Treasurer, the Hon. Josh Frydenberg MP, the Treasurer, *House of Representatives Hansard*, 9 December 2020, pp. 7–8.

Background

- 1.3 In December 2017, the Government directed the Australian Competition and Consumer Commission (ACCC) to inquire into the impact of digital platform services on the state of competition in the media and advertising services markets.²
- 1.4 The ACCC's *Digital Platforms Inquiry Final Report* was released in July 2019. Among the key findings was that the major platforms are unavoidable trading partners for Australian news businesses, and therefore possess substantial bargaining power over these businesses.³
- 1.5 The *Government Response to the Digital Platforms Inquiry Final Report*, released on 12 December 2019, directed the ACCC to work with major platforms and Australian news businesses to develop and implement a voluntary code of conduct to address bargaining power imbalances between digital platforms and media businesses.⁴
- 1.6 The ACCC was to provide a progress report to the government in May 2020, with the code to be finalised no later than November 2020. If an agreement was not forthcoming, the government would develop alternative options, which could include a mandatory code.⁵
- 1.7 The government requested an update on progress towards a voluntary code from the ACCC ahead of May 2020. This update noted that while discussions between the parties had been taking place, progress on a voluntary code had been limited. The ACCC considered it unlikely that any voluntary agreement would be reached with respect to the key issue of remuneration for content.⁶
- 1.8 On 20 April 2020, the government directed the ACCC to develop a mandatory code of conduct. This reflected:
 - that the Australian media sector was already under significant pressure, which was being exacerbated by a sharp decline in advertising revenue driven by the Coronavirus; and
 - the advice of the ACCC that digital platforms and news businesses were unlikely to reach voluntary agreement on the key issue of revenue-sharing.⁷

² *Explanatory Memorandum*, p. 9.

³ *Explanatory Memorandum*, p. 9.

⁴ *Explanatory Memorandum*, p. 9.

⁵ *Explanatory Memorandum*, p. 9.

⁶ *Explanatory Memorandum*, p. 9.

⁷ *Explanatory Memorandum*, p. 10.

International experience

- 1.9 The following provides a non-exhaustive overview of similar European Union (EU) and French policy, and associated media reporting.

European Union Directive on Copyright in the Digital Single Market

- 1.10 In June 2019, the European Council approved a new copyright directive that updated its previous copyright law within the EU (Directive of The European Parliament and of the Council on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC). This reform extended copyright liability to tech giants Google and Facebook.
- 1.11 In November 2019, France became the first EU nation to ratify the new copyright law.

Background⁸

- 1.12 The European copyright law was introduced in 2001 following the implementation of the World Intellectual Property Organization Copyright Treaty in the Information Society Directive 2001/29/EC. Eighteen years later, European law makers decided to update the law, after the European Court of Justice noted that the law should be updated and brought in line with the digital era.
- 1.13 The reform outlines new terms regarding licensing practices to authors and performers in online content sharing services. Websites such as YouTube, Twitter, Facebook and Instagram will have to obtain a license from the rights holders of copyright protected works uploaded by users. This will allow rights holders to negotiate the conditions of the exploitation of their protected works. New and small platforms will be subject to lighter obligations in this regard. The new directive also introduces transparency obligations to online content sharing services regarding the remuneration and the commercial exploitation of licensed works.
- 1.14 The current practice in cases of copyright violation is that the rights holders have to notify the website regarding the infringing use of their works in order for the website to take down the violation, or else face liability of infringement. The reform holds these websites liable for copyrighted works uploaded by users without giving notice. If no authorisation is granted by the rights holder, the website will be liable for infringement of copyright, following a few exceptions.

⁸ Adapted from: Yehuda Neubauer, 'Extended Copyright Liability to Tech Giants Google & Facebook Following the European Copyright Reform', *Ehrlich Group*, <https://www.lexology.com/library/detail.aspx?g=f390ea44-8338-4719-a2ef-b3ea39283054> (accessed 20 January 2021).

- 1.15 The reform also requires news aggregation services like Google and Facebook to negotiate licenses with news outlets in order to post snippets or links to their published articles.
- 1.16 From the users' perspective, the reform introduces new exceptions to copyright infringement for the purposes of text and data mining, online teaching activities and the preservation and online dissemination of cultural heritage. The directive also changes existing exceptions such as quotation, criticism, review, caricature, parody and pastiche from optional to mandatory for member states.
- 1.17 These major changes to EU copyright law made waves worldwide and provoked protest throughout Europe. Critics of the reform are concerned that the liability for online content sharing services will result in upload filters that will filter out legitimate content and severely harm free speech and the free exchange of information. Supporters of the reform, mainly artists, publishers and other content outlets, believe that the new regulations are balanced and appropriate, following years of injustice where third parties made major capital exploiting their protected works with little or no remuneration.
- 1.18 EU Member States had two years to pass legislation at the national level from 2019. This means the full impact of the reform is expected to come into effect by around May 2021.

The French agreement with Google and Facebook

- 1.19 In November 2019, French media organisations lodged a complaint against Google with the country's competition authority over Google's refusal to pay for displaying their content.
- 1.20 This began the process through which the French laws were developed.⁹

⁹ The following are a series of media articles chronicling the events in France:

Cécile Barbière, 'Google wants to bypass France's neighbouring rights', 7 October 2019, *EURACTIV.fr*, translated by Daniel Eck, <https://www.euractiv.com/section/digital/news/google-wants-to-bypass-frances-neighbouring-rights/> (accessed 20 January 2021).

Laurent Barthelemy, 'French court adds pressure on Google to pay for news', 8 October 2020, *Techxplore*, <https://techxplore.com/news/2019-11-french-media-copyright-case-google.html> (accessed 20 January 2021).

'Google strikes payment deal with French media groups', 21 November 2020, *AFP*, <https://sg.news.yahoo.com/google-strikes-payment-deal-french-165505779.html> (accessed 20 January 2021).

Alex Webb, 'Can Google fix the \$108 billion news industry it helped break?' 18 January 2021, *Bloomberg*, https://www.business-standard.com/article/international/can-google-fix-the-108-billion-news-industry-it-helped-break-121011801423_1.html (accessed 20 January 2021).

A comparison of the French and Australian laws

1.21 Ms Rebekah Dunne, in the *Search Engine Journal*,¹⁰ provided a useful comparison between the approaches taken by the French and Australian Governments and why Google is apparently satisfied with the new French law but not the Australian one.

Background to the French Agreement

1.22 In October 2020, Google announced that they were investing US\$1 billion over three years to pay publishers for content displayed on Google 'News Showcase' service.

1.23 Ms Dunne reported that the agreement with France allows Google to negotiate individual licenses whereby payment will be based on specific and measurable metrics. This includes Google paying on behalf of the reader for any content published behind paywalls, allowing users access to content they would not be able to see unless they made a payment.

Background to the Australian Agreement

1.24 Ms Dunne argued that the main difference between the French agreement and the Australian conflict is that Australia is looking for remuneration for Google linking to their content in the Search Engine Results Pages (SERPs) and advanced notice of 'deliberate algorithm changes' that would impact the news media business.

1.25 Google Australia's Managing Director, Ms Mel Silva, outlined issues with the News Media Bargaining Code and proffered three technical amendments that would make the Code "workable" for them.

First, rather than payment for links and snippets, the Code could designate News Showcase, and allow Google to reach commercial agreements to pay Australian news publishers for value in addition to the valuable traffic we already provide through Search.¹¹

1.26 Ms Silva was essentially offering the same deal that was struck with France, whereby payment would be made to publishers agreeing to operate through the Google's News Showcase.

Mathieu Rosemain, 'Google seals content payment deal with French news publishers', *Reuters*, <https://www.reuters.com/article/us-france-google-publishers-idUSKBN29Q0SC> (accessed 22 January 2021).

¹⁰ Rebekah Dunne, 'Why Is Google Paying French Publishers but Fighting Australia?' *Search Engine Journal*, <https://www.searchenginejournal.com/why-google-paying-french-publishers-fighting-australia/393565/amp/> (accessed 27 January 2021).

¹¹ Opening Statement, Ms Mel Siva, 22 January 2021, <https://blog.google/around-the-globe/google-asia/australia/mel-silvas-opening-statement> (accessed 29 January 2021) cited in Rebekah Dunne, 'Why Is Google Paying French Publishers but Fighting Australia?' *Search Engine Journal*.

1.27 This would give Australia ‘two bites of the pie’ as their content would be available in organic search results and the Showcase.

1.28 However, no payment would be made for content shown in organic search results, only news stories within the Showcase would receive compensation.

Secondly, the Code’s final offer arbitration model, with biased criteria presents unmanageable financial and operational risk for Google. If this is replaced with standard commercial arbitration based on comparable deals, this would incentivise good faith negotiations and ensure we’re held accountable by robust dispute resolution.¹²

1.29 This point was also discussed in a blog post published by Google, which outlines eight reasons why the News Media Bargaining Code is unworkable. Google believes that the arbitration process wouldn’t consider the benefits that publishers derive from Google and would be unfairly biased towards the publisher’s costs.

Finally, the algorithm notification provision could be adjusted to require only reasonable notice about significant actionable changes to Google’s algorithm, to make sure publishers are able to respond to changes that affect them.¹³

1.30 Google believes that this aspect of the Code would essentially mean the company gives news publishers special treatment that would leave other businesses that use organic search as a medium to advertise their business at a disadvantage. This, Google argued, would essentially break Google Search.

1.31 Google reiterated that they are willing to pay news publishers but only if they operate through Google News Showcase and make ‘reasonable amendments to the arbitration model’.¹⁴ However, they did not specify what that would look like.

1.32 Finally, Google argued that they do not show full articles but utilise the algorithm to link users to articles, they are not responsible for declining newspaper revenue and that the search engine makes significant contributions to Australia every year.

1.33 Ms Dunne summarised Google’s position saying that Google is, apparently, not opposed to paying for news content, but to the process outlined in the Code.

¹² Opening Statement, Ms Mel Siva, 22 January 2021, cited in Rebekah Dunne, ‘Why Is Google Paying French Publishers but Fighting Australia?’ *Search Engine Journal*.

¹³ Opening Statement, Ms Mel Siva, 22 January 2021, cited in Rebekah Dunne, ‘Why Is Google Paying French Publishers but Fighting Australia?’ *Search Engine Journal*.

¹⁴ ‘8 Facts about Google and the News Media Bargaining Code’, *Google blog*, 22 January 2021, <https://blog.google/around-the-globe/google-asia/australia/8-facts-about-google-and-news-media-bargaining-code/> (accessed 11 February 2021).

1.34 Moreover, if they are the only search engine platform being targeted by the Code, then this would put them at a disadvantage as other companies would not have to legally pay news publishers to advertise their content in the organic search results.

Summary of the bill

1.35 The bill establishes a mandatory code of conduct to address bargaining power imbalances between digital platform services and Australian news businesses. It does this by setting out six main elements:

- bargaining – which require the responsible digital platform corporations and registered news business corporations that have indicated an intention to bargain, to do so in good faith;
- compulsory arbitration – where parties cannot come to a negotiated agreement about remuneration relating to the making available of covered news content on designated digital platform services, an arbitral panel will select between two final offers made by the bargaining parties;
- general requirements – which, among other things, require responsible digital platform corporations to provide registered news business corporations with advance notification of planned changes to an algorithm or internal practice that will have a significant effect on covered news content;
- non-differentiation requirements – responsible digital platform corporations must not differentiate between the news businesses participating in the Code, or between participants and non-participants, because of matters that arise in relation to their participation or non-participation in the Code;
- contracting out – the bill recognises that a digital platform corporation may reach a commercial bargain with a news business outside the Code about remuneration or other matters. It provides that parties who notify the ACCC of such agreements would not need to comply with the general requirements, bargaining and compulsory arbitration rules (as set out in the agreement); and
- standard offers – digital platform corporations may make standard offers to news businesses, which are intended to reduce the time and cost associated with negotiations, particularly for smaller news businesses. If the parties notify the ACCC of an agreed standard offer, those parties do not need to comply with bargaining and compulsory arbitration (as set out in the agreement).¹⁵

1.36 The bill provides that the Minister may designate a digital platform corporation and digital services that must comply with the Code. The Minister may only designate a digital platform corporation and services if the Minister has considered whether there is a significant bargaining power imbalance

¹⁵ *Explanatory Memorandum*, pp. 10–11.

between Australian news businesses and the digital platform corporation's corporate group. In forming a view, the Minister may consider ACCC reports or advice.¹⁶

1.37 A responsible digital platform corporation for a digital platform service is required to participate in the Code if the Minister has made a determination that a service is a designated digital platform service of the corporation.¹⁷

1.38 The responsible digital platform corporation will be either:

- a related body corporate (of the corporation identified in the Ministerial determination) that is incorporated or managed in Australia and operates or controls the designated digital platform service; or
- if that subsidiary does not operate or control the digital platform service by itself or with one or more other entities – the designated digital platform corporation.¹⁸

1.39 For a news business corporation to participate, it must be registered by the Australian Communications and Media Authority (ACMA). The ACMA must register a news business (and the applicant corporation as the registered news business corporation) if the applicant had an annual revenue above \$150,000 in the most recent year or in three of the five most recent years, and the news sources comprising the news business:

- have the primary purpose of creating and publishing core news content;
- are subject to relevant professional journalistic standards; and
- operate predominantly in Australia for the dominant purpose of serving Australian audiences.¹⁹

1.40 Once a news business corporation is registered by the ACMA, each responsible digital platform corporation that operates or controls a designated digital platform service must comply with the general requirements with respect to each registered news business. However, this is subject to any agreement outside the Code which contracts out of the general requirements.²⁰

1.41 Once a news business corporation is registered by the ACMA, it may give notice of an intention to bargain under the Code with a responsible digital platform corporation that operates or controls a designated digital platform service in relation to its covered news content.²¹

¹⁶ *Explanatory Memorandum*, p. 11.

¹⁷ *Explanatory Memorandum*, p. 11.

¹⁸ *Explanatory Memorandum*, p. 11.

¹⁹ *Explanatory Memorandum*, p. 11.

²⁰ *Explanatory Memorandum*, p. 12.

²¹ *Explanatory Memorandum*, p. 12.

- 1.42 One or more registered news business corporations may form a group for the purpose of bargaining collectively with a responsible digital platform corporation under the Code. The collective may nominate one of the group members or a third party to represent the group during the bargaining process.²²
- 1.43 The bill specifically authorises collective bargaining so that it does not contravene the restrictive trade practices provisions in the *Competition and Consumer Act 2010* (CCA). Nothing in the bill is intended to prevent news business corporations from engaging in discussions with one another about forming a collective. This is because forming a collective is authorised under the bill.²³
- 1.44 If a registered news business corporation or collective has indicated an intention to bargain, a responsible digital platform corporation and a registered news business corporation must negotiate in good faith. Breaches of this requirement are subject to a civil penalty.²⁴
- 1.45 If an agreement is not reached between the parties within three months of the registered news business corporation indicating an intention to bargain, the matter will be subject to compulsory arbitration if the news business elects to begin arbitration.²⁵
- 1.46 If a responsible digital platform corporation and a registered news business corporation are subject to compulsory arbitration, an arbitral panel chosen by the bargaining parties (or by the ACMA if the parties fail to agree on panel members) will select between the final offers made by the parties.²⁶
- 1.47 Both parties must submit a final offer to the arbitral panel stating a remuneration amount. This amount is the amount of remuneration to be paid by the responsible digital platform corporation to the registered news business corporation in relation to making its covered news content available on a designated digital platform service.²⁷
- 1.48 The arbitral panel must accept one of those offers, unless it considers that the final offers are not in the public interest, in which case the arbitral panel may amend the more reasonable of the two offers. This is expected to happen in very limited circumstances.²⁸

²² *Explanatory Memorandum*, p. 12.

²³ *Explanatory Memorandum*, p. 12.

²⁴ *Explanatory Memorandum*, p. 12.

²⁵ *Explanatory Memorandum*, p. 12.

²⁶ *Explanatory Memorandum*, p. 12.

²⁷ *Explanatory Memorandum*, p. 12.

²⁸ *Explanatory Memorandum*, pp. 12–13.

Provisions of the bill

1.49 The bill contains only one Schedule.

Schedule 1—Digital platforms and Australian news businesses

1.50 Schedule 1 of the bill makes amendments to the CCA which put into effect the intention of the bill as outlined above.

Review

1.51 The bill provides that a review of the Code will begin within one year of the commencement of the new law.²⁹

Human rights implications

Right to a fair trial

1.52 The bill engages the right to a fair trial in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR) by making many contraventions of the new Part IVBA subject to the imposition of a civil penalty.³⁰

1.53 The civil penalty provisions contained in the new Part IVBA are not ‘criminal’ for the purposes of human rights law. While a criminal penalty is deterrent or punitive, these provisions are regulatory and disciplinary as they aim to encourage compliance with the obligations under the Code.³¹

1.54 The provisions are intended to target relevant corporations. Furthermore, they do not apply to the general public, but to a class (news media businesses and digital platform corporations) who should reasonably be aware of their obligations under the CCA.³²

1.55 Imposing these civil penalties will enable an effective response to non-compliance. The maximum civil penalty amounts that can be imposed under the new Part IVBA are intentionally significant and are in line with the penalties for other provisions in the CCA.³³

1.56 The judiciary continues to have discretion to consider the seriousness of the contravention and impose a penalty that is appropriate in the circumstances. The civil courts are experienced in making civil penalty orders at appropriate levels having regard to the maximum penalty amount, taking into account a

²⁹ *Explanatory Memorandum*, p. 13.

³⁰ *Explanatory Memorandum*, p. 60.

³¹ *Explanatory Memorandum*, p. 60.

³² *Explanatory Memorandum*, p. 60.

³³ *Explanatory Memorandum*, p. 60.

range of factors including the nature of the contravening conduct and the size of the organisation involved.³⁴

- 1.57 Therefore, a relevant consideration in setting a civil penalty amount is the maximum penalty that should apply in the most egregious instances of non-compliance with the new Part IVBA.³⁵
- 1.58 Finally, the civil penalties carry no sanction of imprisonment for non-payment of the penalty. Based on the above factors, the nature and severity of the civil penalties in the new Part IVBA are not 'criminal' for the purposes of human rights law.³⁶

Protection from arbitrary or unlawful interference with privacy

- 1.59 The bill does not engage the right to protection from arbitrary or unlawful interference with privacy under Article 17 of the ICCPR.³⁷
- 1.60 The bill provides that a digital platform corporation must provide, to a registered news media business, a list and explanation of data that relates to user interactions with the news media business' covered news content to that news media business. The list and information must be updated annually.³⁸
- 1.61 Under the Code, parties may also bargain to receive data that may include personal information, under the existing operation of the *Privacy Act 1988*, by specifying this as a 'specified issue' for bargaining about.³⁹
- 1.62 Under the arbitration framework in the bill, parties may ask each other for information, including personal information, but only as permitted by the existing *Privacy Act 1988*.⁴⁰
- 1.63 These obligations and abilities do not interfere with Article 17 of the ICCPR because they do not require or authorise any additional use or disclosure of information than what is already regulated under the *Privacy Act 1988*, so the bill does nothing to change the privacy protections for personal information already in place under Australian law.⁴¹

³⁴ *Explanatory Memorandum*, p. 60.

³⁵ *Explanatory Memorandum*, p. 61.

³⁶ *Explanatory Memorandum*, p. 61.

³⁷ *Explanatory Memorandum*, p. 61.

³⁸ *Explanatory Memorandum*, p. 61.

³⁹ *Explanatory Memorandum*, p. 61.

⁴⁰ *Explanatory Memorandum*, p. 61.

⁴¹ *Explanatory Memorandum*, p. 61.

Conclusion

1.64 The EM argues that, accordingly, to the extent that Schedule 1 engages with the rights under Article 14 and 17 of the ICCPR, it is compatible with human rights as any limitations are reasonable, necessary and proportionate.⁴²

Financial impact

1.65 According to the EM, there will be no financial impact from this measure.⁴³

1.66 In the 2019–20 Mid-Year Economic and Fiscal Outlook, the government agreed to provide \$28.6 million over four years from 2019–20 to implement recommendations from the Digital Platforms Inquiry. The response will include:

- \$26.9 million over four years to establish a Digital Platforms Unit within the ACCC to implement a number of recommended reforms, including monitoring and collecting data about digital platforms, investigating potential breaches of competition and consumer law and facilitating a voluntary code of conduct between new media businesses and digital platforms. The ACCC will also undertake more detailed inquiries as directed by the Treasurer, the first being into online advertising and ‘ad-tech’ services
- \$1.7 million over two years to [the Attorney-General’s Department to] conduct a review of the Privacy Act to ensure it remains fit for purpose in the digital era.⁴⁴

Compliance cost impact

1.67 According to the EM, this measure will result in a medium increase in compliance costs. It is expected that the measure will increase costs for businesses by \$10.5 million to \$13.0 million per year.⁴⁵

Legislative Scrutiny

Senate Standing Committee on the Scrutiny of Bills

Use of delegated legislation

1.68 The Senate Standing Committee on the Scrutiny of Bills reviewed the legislation and expressed concerns about the referral of significant matters to delegated legislation, rather than being included in the bill itself.

1.69 The Scrutiny of Bills Committee noted that:

⁴² *Explanatory Memorandum*, p. 61.

⁴³ *Explanatory Memorandum*, p. 7.

⁴⁴ *Mid-Year Economic and Fiscal Outlook 2019-20*, Digital Platform Unit—Establishment, p. 280.

⁴⁵ *Explanatory Memorandum*, p. 7.

Proposed section 52E provides that the Minister may, by legislative instrument, make a determination that specifies services as ‘designated digital platform services’ and specifies a corporation as a ‘designated digital platform corporation’.

The explanatory memorandum notes that in making a determination, the Minister must consider whether there is a significant bargaining power imbalance between Australian news businesses and the group comprised of the corporation and all of its related bodies corporate. The explanatory memorandum also notes that the Minister may consider any reports or advice of the Australian Competition and Consumer Commission (Commission). However, the explanatory memorandum contains no justification regarding why it is necessary to allow such significant matters to be set out in delegated legislation.

The committee notes that a legislative instrument, made by the executive, is not subject to the full range of parliamentary scrutiny inherent in bringing proposed changes in the form of an amending bill.

In this instance, the committee’s scrutiny concerns are heightened due to the use of certain terms which are not defined in the bill. Specifically, the term ‘digital platform’ is not defined in the bill. The explanatory memorandum states that the term ‘digital platform’ is intended to take its ordinary meaning; and explains that it is intended that the term will capture platforms that deliver a wide variety of services such as social media services, search engines and other digital content aggregators.

The committee's view is that significant matters, such as which digital platforms must participate in the Code, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided. If such matters are to remain in delegated legislation, the committee considers parliamentary scrutiny over such significant matters could be increased by requiring the positive approval of each House of the Parliament before the instrument could come into effect.⁴⁶

- 1.70 The Scrutiny of Bills Committee requested the Treasurer's advice as to why it is considered necessary and appropriate to leave the determination of which digital platforms must participate in the News Media and Digital Platforms Mandatory Bargaining Code to delegated legislation.
- 1.71 The Scrutiny of Bills Committee also requested the Treasurer's advice as to whether the bill can be amended to require the positive approval of each House of the Parliament before determinations made under proposed section 52E come into effect.⁴⁷
- 1.72 As of Monday, 8 February 2021, the Scrutiny of Bills Committee had not received a response from the Treasurer.

⁴⁶ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest, 1 of 2021*, 29 January 2021, pp. 48–49.

⁴⁷ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest, 1 of 2021*, 29 January 2021, p. 49.

1.73 Similarly, the Scrutiny of Bills Committee noted that the bill seeks to insert a range of powers to prescribe matters in delegated legislation into the CCA.

The committee's view is that matters which may be significant to the operation of a legislative scheme should be included in primary legislation unless sound justification for the use of delegated legislation is provided.

In addition, the committee notes that some of the above provisions enable delegated legislation to modify the operation of primary legislation and are therefore akin to Henry VIII clauses, which authorise delegated legislation to make substantive amendments to primary legislation. The committee has significant scrutiny concerns with Henry VIII-type clauses, as such clauses impact on the level of parliamentary scrutiny and may subvert the appropriate relationship between the Parliament and the Executive.

The committee considers that these matters have not been sufficiently addressed in the explanatory memorandum and that the prescription of so many delegated legislation making powers in the bill has not been adequately justified.⁴⁸

1.74 The Scrutiny of Bills Committee therefore requested the Treasurer's detailed advice as to why it is considered necessary and appropriate to leave these matters to delegated legislation.⁴⁹

1.75 As of Monday, 8 February 2021, the Scrutiny of Bills Committee had not received a response from the Treasurer.

Parliamentary scrutiny

1.76 Finally,

Proposed section 52ZZS provides for a review of the operation of the Part introduced by the bill (relating to the news media and digital platforms mandatory bargaining code). The proposed section specifies that the Minister must ensure that copies of the report of the review are available for public inspection as soon as practicable after the period of 28 days beginning on the day the report is given to the minister, however, there is no requirement for the report to be tabled in Parliament.

The committee notes that not providing for the review report to be tabled in Parliament reduces the scope for parliamentary scrutiny. The process of tabling documents in Parliament alerts parliamentarians to their existence and provides opportunities for debate that are not available where documents are only available for public inspection. As such, the committee expects there to be appropriate justification for not including a requirement for review reports to be tabled in Parliament.⁵⁰

⁴⁸ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest, 1 of 2021*, 29 January 2021, pp. 50–51.

⁴⁹ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest, 1 of 2021*, 29 January 2021, p. 51.

⁵⁰ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest, 1 of 2021*, 29 January 2021, p. 51.

- 1.77 The Scrutiny of Bills Committee requested the Treasurer's advice as to whether proposed section 52ZZS of the bill can be amended to provide that the Minister must arrange for a copy of the review report to be tabled in each House of the Parliament within 15 sitting days of the House after the report is given to the Minister.⁵¹
- 1.78 As of Monday, 8 February 2021, the Scrutiny of Bills Committee had not received a response from the Treasurer.

Regulation Impact Statement

- 1.79 The EM argues that the bill will provide news media businesses and digital platforms incentive to reach agreements for remuneration for news content on digital platform services. The EM argues that there will be a medium increase in compliance costs associated with this measure, largely affecting digital platforms. In summary:
- the ACCC found in its *Digital Platform Inquiry* (July 2019) that there is a bargaining power imbalance between digital platforms and news media businesses so that news media businesses are not able to negotiate for a share of the revenue generated by the digital platforms and to which the news content created by the news media businesses contributes. Government intervention is necessary because of the public benefit provided by the production and dissemination of news, and the importance of a strong independent media in a well-functioning democracy;
 - the *Digital Platforms Inquiry*⁵² has been certified as an independent review which involved a process and analysis equivalent to a Regulation Impact Statement;
 - the scope of the certified review covers the scope of the policy proposal with the exception that it does not recommend a mandatory code with arbitration on remuneration as an immediate measure. Rather, the ACCC recommended a code requiring designated digital platforms to develop codes including a commitment to fair negotiation about remuneration;
 - in its December 2020 response to the ACCC *Digital Platforms Inquiry Final Report*, the government asked the ACCC to work with the digital platforms and news media businesses to develop voluntary codes, and to provide a progress report by May 2020;
 - the Government then requested an update on progress towards a voluntary code from the ACCC ahead of May 2020. The ACCC noted that, whilst discussions between the parties had been taking place, progress on a voluntary code had been limited. The ACCC considered it unlikely that any

⁵¹ Senate Standing Committee for the Scrutiny of bills, *Scrutiny Digest*, 1 of 2021, 29 January 2021, p. 51.

⁵² The Inquiry report can be accessed here: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

voluntary agreement would be reached with respect to the key issue of remuneration for content;

- following this report from the ACCC, on 20 April 2020, the government committed to developing a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms, specifically Google and Facebook; and
- to address the gap in the analysis between the ACCC's inquiry and the government's consideration of options for a mandatory code, supplementary analysis on the costs, benefits and risks associated with a mandatory code was prepared, consistent with the *Australian Government Guide to Regulatory Impact Analysis*.⁵³

1.80 Chapter 2 of the EM provides further analysis of factors impacting the Code. In effect it is a supplementary Regulation Impact Statement.⁵⁴

Date of effect

1.81 The bill will come into effect the day after it receives Royal Assent.⁵⁵

Conduct of the inquiry

1.82 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions by 18 January 2021.

1.83 The committee accepted and published 55 submissions, which are listed in Appendix 1.

1.84 The committee held two public hearings on Friday, 22 January 2021, and Monday, 1 February 2021 for the inquiry. The names of witnesses who appeared at the hearings can be found in Appendix 2.

Acknowledgements

1.85 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who made written submissions and participated in the public hearings.

Notes on references

1.86 In this report, references to the Committee Hansard are to the Proof Hansard and page numbers may vary between Proof and Official Hansard transcripts.

⁵³ *Explanatory Memorandum*, pp. 7–8.

⁵⁴ *Explanatory Memorandum*, p. 8.

⁵⁵ *Explanatory Memorandum*, p. 7.

Chapter 2

Views on the bill

- 2.1 The committee accepted and published 55 submissions to the inquiry. The views expressed in both the submissions and public hearing testimonies were quite diverse.
- 2.2 This chapter will examine:
- support for the bill;
 - critique of the bill; and
 - Australian Competition and Consumer Commission (ACCC) and Treasury responses to that critique.
- 2.3 Finally, this chapter will provide the committee's views on the bill and its recommendations.

Support for the bill

- 2.4 Major support for the bill was found in those media organisations that are likely to benefit from the new arrangements and the fact that it addresses the bargaining power imbalance identified by the ACCC. However, support for the bill was not exclusive to those organisations.
- 2.5 Nine Media commented:

Over the past two decades Google and Facebook have built businesses of almost unimaginable scale and dominance. Together they're valued at more than the entire Australian Stock Exchange. They're well north of the GDP of our entire nation and they hold effective monopolies in search and social media. They're the gatekeepers to the broader internet.

As the Treasurer said last month, they collect 81 cents in every digital advertising dollar in Australia. Their market credibility, business models and substantial valuations have been built on having free and unfettered access to quality journalism and content, content that is created by and funded by others... Without strong regulatory intervention, the sustainability of our diverse local media sector is at risk...¹

- 2.6 News Corporation commented:

...organisations providing that real news have never been more fragile. The code you are considering can play a vital role in securing the future of real news for all Australians. There may well be opportunities to improve the code, but we can't allow refinements to undermine its core intention to provide a framework that creates an environment for successful commercial negotiations between media companies and tech platforms.

¹ Mr Chris Janz, Chief Digital and Publishing Officer, Nine Entertainment Company, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 26.

Resorting to the powers of the deadlock-breaking procedures of the code is certainly the last port of call, not the first.

...

The coming code has been a catalyst for discussions that have already had a positive impact not only in Australia but around the world. News supports the code and urges that it be legislated as soon as possible. We are genuinely open-minded if there are clear opportunities to enhance it, but we are staunchly opposed to attempting to undermine it either in spirit or in its effectiveness.²

2.7 Australian Associated Press (AAP) commented:

AAP supports the passage of the bill in its current form, as it assists retail media—that is, news media who have a direct-to-consumer news model—at a time when the industry is in a state of deep and prolonged crisis. AAP has been the collateral damage of that crisis, culminating in its near closure in March last year...

The bill will provide a lifeline to consumer facing news media services.³

2.8 Guardian Australia argued that the bill:

...will provide the necessary dynamics to facilitate commercial agreements with Google and Facebook, which will result in us employing more journalists in Australia... covering issues of national importance and that's obviously the intent. We believe that the code will facilitate commercial agreements for smaller publishers as well, indeed anyone earning as little as \$150,000 a year, which will contribute to ensuring that more news sources emerge to add to Australia's very concentrated media landscape.

A dominant theme of those objecting to the code is the notion that forcing platforms to pay for the benefit they receive from publisher content will somehow undermine the principles of an open internet... opponents of the code are defending an open internet that ceased to exist years ago and, instead, has become dominated by a small number of very, very large US tech companies.⁴

2.9 Free TV, the peak industry body representing commercial television broadcasters, commented:

We're here to support a very simple proposition, and that proposition is that the digital platforms that benefit from valuable news content should pay a fair price for that content. Free TV broadcasters spend over \$360 million annually in producing high-quality news and current affairs content. This investment supports the employment of local journalists from Broome to Byron and from Townsville to Tasmania. Commercial

² Mr Campbell Reid, Group Executive Corporate Affairs, Policy and Government Relations, News Corporation, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 27.

³ Ms Emma Cowdroy, Chief Executive Officer, Australian Associated Press (AAP), *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 27.

⁴ Mr Daniel Stinton, Managing Director, Guardian Australia, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 28.

television broadcasters produce 486 hours of news and current affairs content every week.

We believe that in a well-functioning democracy there is a responsibility that falls on the businesses that become gateways between the community and information. This is a responsibility well understood by commercial TV broadcasters. For decades, as an influential media platform, we have operated under a regulatory compact that requires us to pay broadcast licence fees, pay spectrum fees and meet stringent content obligations. Our community now expects similar regulation for businesses of the size and influence of Google and Facebook. This legislation puts forward the entirely reasonable proposition that, as gateway businesses that are collecting data and monetising news content, Facebook and Google must pay a fair price for the quality of news content that they use...

Free TV strongly supports the news media bargaining code, and we urge this committee to recommend its passage...⁵

2.10 The Australian Broadcasting Corporation (ABC) was also supportive of the bill:

The inclusion of the ABC in the remuneration arrangements under the code has the potential to provide a major boost to coverage of regional Australia and also strengthen the ABC's emergency coverage. This is particularly important at a time when there has been a withdrawal of some local commercial media. The ABC, with 48 locations outside the capital cities, has the track record and capability to deliver the benefits flowing from the code and ensure that revenue generated from taxpayer funded journalism goes back into services for the community.⁶

2.11 The Special Broadcasting Service (SBS) was also supportive:

SBS supports a bargaining code to ensure that fair, impartial, balanced, accurate and trustworthy news and current affairs is readily accessible to and shareable by all Australians by being well represented on digital platforms. Digital platforms are an important way for SBS to reach audiences and provide them with access to news and current affairs in the public interest. However, the digital platforms also control what content is seen by Australian audiences, which is why this legislation is so important.⁷

2.12 The Media, Entertainment and Arts Alliance (MEAA), a union with members across the arts, entertainment, sports, outdoor, music and events industries, was also supportive:

At a time of rampant misinformation and disinformation, the public interest in supporting a robust and diverse media industry is greater than

⁵ Mr Greg Hywood, Chair, Free TV Australia *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 39.

⁶ Mr Mark Tapley, Director, Strategy, Australian Broadcasting Corporation (ABC), *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 44.

⁷ Ms Clare O'Neil, Director, Corporate Affairs, Special Broadcasting Service (SBS), *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 44.

ever. That is why we support the implementation of a mandatory news media bargaining code as one element of a policy solution for this urgent problem. We strongly support a system to recoup some revenue from digital platforms operating in Australia as a contribution towards the production costs of the journalistic material they carry.⁸

Critique of the bill

Responses from Google and Facebook

2.13 Google and Facebook were not supportive of the bill. A summary of their positions is below.

Google

2.14 Google provided a summary of its concerns:

In its current form the code remains unworkable and, if it became law, would hurt small publishers, small businesses and the millions of Australians that use our services every day. There is a way forward that allows Google to pay publishers for value without breaking Google search and our business here in Australia.

There are three concerns, which I will touch on shortly, but the most critical of these is the requirement to pay for links and snippets in search. This provision in the code would set an untenable precedent for our business and the digital economy. It's not compatible with how search engines work or how the internet works.⁹

2.15 Google's three main concerns were:

First, rather than payments for links and snippets, the code could designate News Showcase and allow Google to reach commercial agreements to pay publishers for value, in addition to the valuable traffic that we send them through search. News Showcase launched in 2020. It has a global budget of \$1.3 billion over three years, and it pays news publishers for their editorial judgement, curating panels of news that would appear daily in Google services. It also pays to grant users access to selected stories behind the paywall, not linked to search. Google can pay a wide and diverse range of news publishers, including smaller and regional publishers, and we've already reached News Showcase agreements with 450 publications globally, including seven in Australia.

Secondly, the code's final offer arbitration model, with biased criteria, presents unmanageable financial and operational risks for Google. If this were replaced with standard commercial arbitration based on comparable deals, this would both incentivise good-faith negotiations and ensure that we are held accountable by a robust dispute resolution process.

⁸ Mr Adam Portelli, Director, Media, Media, Entertainment and Arts Alliance, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 1.

⁹ Ms Melanie Silva, Managing Director and Vice President, Google Australia and New Zealand, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 1.

Finally, the algorithm notification provision could be adjusted to require only reasonable notice about significant actionable changes to Google's algorithm. This would make sure that publishers are able to respond to changes that affect them.¹⁰

Facebook

2.16 Facebook summarised its views:

...we are keen to strike commercial deals with many Australian news publishers which will substantially increase investment in the news ecosystem and in journalism... However, the draft news bargaining law as it stands prevents us from being able to reach viable agreements; therefore, rather than increasing investment in news in journalism, it will have the opposite effect...

The law would compel us to enter into agreements with all news publishers in Australia without any regard for the true commercial value for our business. It gives publishers near complete control of these negotiations and will encourage unreasonable behaviour like ambit claims and bargaining in non-commercial ways. The likely outcomes for us are entirely uncapped and unknowable.

This highly prescriptive micro-regulation seeks to control almost every interaction Facebook would have with news publishers and it is accompanied by very heavy penalties. There is no other law like it in Australia. We recognise changes were made to the law as proposed by the ACCC. However, the draft still fundamentally fails to acknowledge the commercial and technical realities of how publishers use Facebook and the value we provide to them.¹¹

2.17 Both Google and Facebook suggested to the committee that should this bill become law, they would need to significantly adjust to satisfy their commercial interests. In reference to Search services, Google stated:

We have had to conclude, after looking at the legislation in detail: we do not see a way, with the financial and operational risks, that we could continue to offer a service to Australia.¹²

2.18 Facebook explained that while it would still be available in Australia as a social network site, it would no longer be willing to provide news links:

We've explained, we think, in order to inform the policymaking process, a potential worst-case consequence of the law as it stands.

...this does not mean that Facebook would no longer be available for the millions of people in Australia who love Facebook and for the many small businesses, including in regional Australia, that make use of Facebook. The great majority of people who are using Facebook would continue to be

¹⁰ Ms Melanie Silva, *Committee Hansard*, Friday, 22 January 2021, Canberra, pp. 1–2.

¹¹ Mr Simon Milner, Vice President, Public Policy, Asia-Pacific, Facebook, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 13.

¹² Ms Melanie Silva, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 8.

able to do so, but we would no longer be able to provide news as part of the Facebook product.¹³

Further critique

Legislation unworkable or unforeseen outcomes

2.19 Several submitters claimed the legislation would either be unworkable or that it could produce perverse or unwanted outcomes. For example, GoAutoMedia commented:

We appreciate that the ACCC and the Coalition are wanting to act in the best interests of preserving high quality journalism in this country and want to assist news organisations and journalists faced with declining advertising revenue and (now exacerbated by the pandemic) but care needs to be taken how any action at a high-level might do more serious damage to the lower level of small publishers.¹⁴

Strengthens the existing market players

2.20 In a similar vein, concerns were expressed that the bill's provisions would strengthen the already existing large media players. The Bundaberg Regional Council commented:

The bill appears to favour large traditional media enterprises and risks stifling smaller and innovative alternative publishers.

Since the withdrawal from many regional markets by News Corp and Nine, numerous small publishers have emerged, many of whom use digital platforms to extend their reach and engagement. It's not clear they need this bill or that they will gain from its provisions any way.¹⁵

2.21 Similarly, the Country Press Association stated:

Whilst the bill generally works well... the current digital platforms legislation rewards the large companies and their digital-only syndicated-content models at the expense of smaller media businesses with true local news that is expensive to produce. This can only lead to reduced diversity of media in Australia...

This legislation offers a once in a lifetime opportunity to ensure the protection of independent and diverse journalism. The legislation needs to enhance media diversity and create financial support for Australia's small to medium regional and suburban news publishers and not result in providing significant funding, and ultimately further market share, to News Corp and Nine.¹⁶

¹³ Mr Simon Milner, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 14.

¹⁴ GoAutoMedia, *Submission 18*, p. 5.

¹⁵ Bundaberg Regional Council, *Submission 11*, p. 3.

¹⁶ Mr Bruce Ellen, President, Country Press Australia, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 20.

Designation under the Code

2.22 Submitters also expressed concern around the process for designation of a digital platform under the Code. The Internet Association commented:

The Code grants unfettered discretionary powers to the Treasurer without proscribing clear standards or principles for designating which companies the Code will apply to. This broad discretionary power raises particular concerns because the Code validates the government's ability to expropriate revenue from selected foreign companies and raises significant national treatment concerns.¹⁷

Possible violation of international treaties and trade agreements

2.23 The committee received a number of submissions from overseas, including the United States (US) Government, noting the potential violation of international treaties and trade agreements.

2.24 The US Chamber of Commerce observed:

[the Code of Conduct]...explicitly targets and discriminates against US companies. Further, the arbitration process established under the code fails to strike the balance appropriate to any arbitration process, and the requirements to reveal changes in algorithms are not justifiable. As a result, the proposal violates the non-discrimination obligations to which Australia has undertaken in the Australia-United States Free Trade Agreement and the World Trade Organization's General Agreement on Trade in Services.

We therefore respectfully repeat our request that Australia revisit the Code and revise it in a manner consistent with Australia's international obligations, and we stand ready to work with you in that effort.¹⁸

Undermines internet freedom and openness

2.25 The committee received submissions from two high-profiles internet innovators who both expressed concerns about the legislation undermining the freedom and democratic openness that the internet was founded on.

2.26 Mr Vint Cerf, one of the original co-designers of the TCP/IP protocols and current Google employee, commented:

...having now reviewed the form under which this legislation has been introduced to Australia's Parliament, I am concerned that this Bill in its current form would undermine the basic framework upon which the internet was built, and on which the modern economy thrives.¹⁹

2.27 Sir Tim Berners-Lee, also an internet pioneer, commented specifically about the use of hypertext links:

¹⁷ The Internet Association, *Submission 14*, p. 3.

¹⁸ US Chamber of Commerce, *Submission 13*, p. 1.

¹⁹ Mr Vint Cerf, *Submission 1*, p. 1.

I firmly believe that constraints on the use of hypertext links are not the correct way to achieve this goal. It would undermine the fundamental principle of the ability to link freely on the web and is inconsistent with how the web has been able to operate over the past three decades. If this precedent were followed elsewhere it could make the web unworkable around the world. I therefore respectfully urge the committee to remove this mechanism from the code.²⁰

Algorithms

2.28 Submitters also commented on access to algorithms and the reporting requirements when those algorithms are changed. For example, Atlassian stated:

We also raise a question as to whether ‘algorithmic transparency’ is necessary to accomplish the Government’s regulatory goals. No other types of web site on the Internet receive transparency reports from Google and Facebook and this requirement would be another badge of peculiar ‘government-favoured’ status for NMB web sites.²¹

Responses to critique

2.29 The ACCC and Treasury, in their evidence to the committee, effectively re-butted many of the assertions made by those critical of the bill.

2.30 In arguing for the necessity of the bill, the ACCC suggested that public interest journalism could be distinguished from other forms of content made available in the digital ecosystem due to the critical role it performs in a democratic society.

2.31 The ACCC explained that, at its heart, the bill provides a code with mandatory arbitration in order to produce a dynamic that drives commercial agreements and overcomes identified bargaining power imbalances between media organisations and large internet platforms. That mandatory arbitration is, in effect, the ‘big stick’ in the background should the soft-speaking fail:

Senator BRAGG: Effectively what you've said today is that if there wasn't a code place there would be no serious opportunity to have a balanced discussion and ultimately a deal, because there is no need for the major platforms to negotiate because of their immense market power. Is that right?

Mr Sims: That's absolutely right, yes.

Senator BRAGG: So your point is you need the code to drive the parties to the table...

Mr Sims: Absolutely correct again, yes.²²

²⁰ Sir Tim Berners-Lee, *Submission 46*, p. 2.

²¹ Atlassian, *Submission 48*, p. 3.

²² *Committee Hansard*, Friday 22 January 2021, Canberra, p. 56.

2.32 Treasury made similar comments, emphasising that the mandatory arbitration aspect of the Code may never be invoked, yet its presence provides the impetus for agreements to be reached:

One of the interesting things is the actual provision of a code in itself changes the market dynamics without the code necessarily being invoked. We've seen that, for example, in the sugar industry. The existence of the code and the existence of elements of mandatory arbitration have actually driven commercial outcomes without the arbitration mechanisms being sparked.²³

2.33 The ACCC argued that the Code includes the provision for collective bargaining by news media businesses in order to assist smaller news media businesses, including regional and community media, to bargain for fair deals under the Code.²⁴

2.34 The ACCC also rejected the argument that the proposed code will 'break' search or destroy a free and open internet, pointing out that paid search ads did not 'destroy' search.²⁵

2.35 Responding to Google and Facebook's assertion that the Code is 'unworkable', the ACCC stated:

It is workable; it allows for a process of negotiation, and I have every belief that both parties, news media businesses and platforms, will want to do commercial deals. And then you've got arbitration there, which is what really gives strength to the bargaining position of the news media businesses. So I think it's workable. We've seen these sort[s] of things work in the past where you've got negotiate-arbitrate regimes. I think this is just something Google and Facebook don't want.²⁶

2.36 This sentiment was echoed by Treasury:

There is ongoing discussion with the parties in terms of the issues they've raised before this committee. Some of them are very technical in nature. There has been open dialogue with those parties. A lot of the concerns particularly relate to how things will work in practice, given that having a code in this sector is new. There are technical things to work through, but, on balance, the government does believe that this is workable.²⁷

2.37 The ACCC also argued that Australia's arbitration approach is better than the copyright approach being pursued in France:

²³ Ms Meghan Quinn, Deputy Secretary, Department of the Treasury, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 65.

²⁴ Mr Rod Sims, Chair, Australian Competition and Consumer Commission, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 50.

²⁵ Mr Rod Sims, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 50.

²⁶ Mr Rod Sims, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 51.

²⁷ Ms Meghan Quinn, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 50.

The other most perhaps advanced regime is in Europe where you've got a copyright regime, which was mentioned earlier today, and deals have been done in France in relation to that. Those deals were done under a copyright law that definitely covered search. So there's no doubt the law under which those deals were done involves search. In the end, they did commercial deals that I think largely involved Showcase, but it was with a law pursuant to search. It's similar to what we're doing here. But we think a negotiate/arbitrate framework is much better than trying to do it under copyright.²⁸

2.38 The committee noted the concerns expressed by the US Government and US Chamber of Commerce. To these, Treasury responded:

Concerns have been raised by US interested parties. As submitted to this committee and submitted to the government previously, we've had detailed discussions with those stakeholders and have addressed quite a lot of their concerns.²⁹

...

I note that the covering letter to this committee had as an attachment a previous submission they have provided. Many of the issues in that previous submission have been addressed through the course of the discussions, and we are looking at any issues that are outstanding. We have had quite extensive discussions with the US trade authorities, and part of it is explaining our system of governance and how our legal system works. In their system, because it is much more legal based, they rely on a case going before the courts and then actions happening. We have explained to them in a great deal of detail about how it works here in terms of having a code, wanting commercial parties to come together, the ACCC's inquiry and all those sorts of things. We have talked them through that, tried to address their concerns and explained the government's policy position to them. It's fair to say those conversations are ongoing, subject to explaining the final version of the code...³⁰

2.39 In response to concerns about the sharing of algorithm information, Treasury stated that the Code does not provide for the transfer of intellectual property from one party to another:

Senator BRAGG: Will the code require digital platforms to reveal how algorithms work?

Ms Quinn: No. Explicitly, the code does not provide for the transfer of intellectual property from one party to another. This was a concern raised around the drafting of the earlier code, and it's been very carefully considered to make it absolutely crystal clear that there is no intention for intellectual property to be transferred from one party to another, and that's quite an important feature, to ensure that's really clear. Similarly, there is

²⁸ Mr Rod Sims, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 53.

²⁹ Ms Meghan Quinn, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 54.

³⁰ Ms Meghan Quinn, *Committee Hansard*, Monday, 1 February 2021, Canberra, pp. 61–62.

no transfer of data around privacy data or anything like that, which was also a concern raised by stakeholders.

Senator BRAGG: So, basically, the code does not require digital platforms to share user data with Australian news businesses?

Ms Quinn: Absolutely not.³¹

Committee comment

- 2.40 The committee is pleased to see the many interested parties contributing to the debate on this ground-breaking legislation. Their contributions demonstrate how important this issue is. The committee agrees that public interest journalism is more than just an ordinary consumer product that has been undermined or ‘disrupted’ by new technology; rather public interest journalism is a cornerstone of democracy and its survival is imperative in a society increasingly vulnerable to misleading information that can so easily be spread on the internet.
- 2.41 The committee wishes to acknowledge the detailed work done by the ACCC in the preparation of the legislation and the extensive consultation process they conducted that included both Google and Facebook.
- 2.42 While the evidence received demonstrated some polarised views on the bill, there is significant support for the bill’s aims. Further, while some submitters have questioned the methods and recommended additional refinements, there is a strong view that large multinational technology companies—in this case Google and Facebook—should not remain outside sensible regulations that protect the public interest.
- 2.43 Media organisations and other groups, regardless of their philosophical underpinnings, still see the need for this bill. Indeed, the progressive think-tank, the Australia Institute, commented:

I'm from the progressive side of politics. It's not normal for me to backing in legislation from a conservative government with the support of News Limited but you've got to look at the bigger picture. There's a bit of polarisation. There are some people on the progressive side of politics who will be saying if it's going to support News Limited it's obviously not in the public interest. But I think that on this occasion we just need to look at the bigger picture, like you are, to see how we can accommodate this transformative technology and ensure that it doesn't do damage to what's always made Australia great.³²

³¹ *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 59.

³² Mr Peter Lewis, Director, Centre for Responsible Technology: The Australia Institute, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 30.

Review of the legislation

- 2.44 The innovative nature of the bill reflects the growing international recognition that public interest journalism is a public benefit that is being undermined by the internet and that new legislative frameworks are required.³³ As noted in chapter one, France and other countries are also introducing legislation with the same aims, albeit with different mechanisms.
- 2.45 The committee notes that the bill was subject to an extensive and thorough consultation process. For example, the Guardian Australia noted:
- This is a pretty complex market that we're all operating in and this is world-leading legislation as far as we are concerned. So I think extensive consultation, while frustrating at times, is probably appropriate. But again I would just make the point: While this legislation is world leading, from Australia, the regulatory pressure on Google and Facebook is building around the world.³⁴
- 2.46 The committee notes that even supporters of the bill, felt that further amendments were possible to improve the law. Free TV recommended a series of amendments,³⁵ as did SBS,³⁶ the ABC,³⁷ the MEAA³⁸ and Solstice Media,³⁹ amongst others.
- 2.47 Treasury also acknowledged that, despite the many and varied consultations and legal advice, that as is commonly the case for all legislation: 'there are legal risks associated to the bill, both domestic and international.'⁴⁰ Treasury also noted that the government, in developing the bill, had considered its domestic and international law obligations.
- 2.48 The committee accepts that there remains the possibility that not all risks have been taken into account, and that further refinement may be needed to the arbitration mechanism and other parts of the Code so that they work in an optimum manner. Accordingly, the committee strongly supports the 12 month review mechanism built into the legislation.

³³ See Mr Chris Cooper, Executive Director, Reset Australia, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 6: "The news media bargaining code is a world first in many ways, and I think we're at the beginning of this journey where we're seeing the appropriate kinds of regulation imposed."

³⁴ Mr Daniel Stinton, *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 30.

³⁵ Mr Greg Hywood, Chair, Free TV Australia *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 39.

³⁶ See their suggested amendments in *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 45.

³⁷ See their suggested amendments in *Committee Hansard*, Friday, 22 January 2021, Canberra, p. 44.

³⁸ Mr Adam Portelli, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 1.

³⁹ Mr Eric Beecher, Chairman, Private Media and Solstice Media, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 32.

⁴⁰ Ms Meghan Quinn, *Committee Hansard*, Monday, 1 February 2021, Canberra, p. 63.

Final comments

2.49 Despite the concerns raised by various submitters and witnesses, the committee is confident that the bill will deliver on its intended outcomes. Its provisions will provide the basis for a more equitable relationship between the media and Google/Facebook and, through this, help safeguard public interest journalism in Australia. Accordingly, the committee recommends that the bill be passed.

Recommendation 1

2.50 The committee recommends that the bill be passed.

Senator Slade Brockman

Chair

Liberal Senator for Western Australia

Additional comments - Labor Senators

- 1.1 Labor Senators recommend the bill be passed, subject to the government addressing key concerns as the government has 'signalled' it will.
- 1.2 Labor Senators are of the view that the government should ensure that a bill of such consequence, in a negotiation context, be readied for debate in Parliament. We urge the government to answer outstanding Senate questions and circulate any proposed amendments as a matter of urgency.
- 1.3 Labor Senators also recommend that the government use precise language in public statements regarding what designations it intends to make under the code. This is in order to save any misunderstanding or unnecessary uncertainty for the media, digital platforms, small businesses and citizens and consumers who may be impacted.
- 1.4 Labor Senators affirm the need to address the bargaining power imbalance between news media businesses and digital platforms. We affirm that Labor has offered constructive, in-principle support for a workable code since the government announced a mandatory code in April 2020.
- 1.5 Labor Senators note that many of the concerns, now before the committee, were raised by stakeholders during public consultation on the draft code over six months ago, but not resolved at the time. We note the government indicated it would have the code in place in 2020 yet the bill was not introduced until the final sitting week of Parliament last year and remains subject to government amendment in 2021.
- 1.6 Labor Senators note that following the conclusion of public hearings before the inquiry, there were further developments and negotiations between the government and Google.
- 1.7 On 4 February 2021, it was reported that:

Google has not backed down on its threat to withdraw from Australia in a call between Scott Morrison and the tech giant's parent company chief Sundar Pichai on Thursday, but tensions appear to be easing" and that the Prime Minister said "I have been able to send them the best possible signals that should give them great encouragement to engage with the process and conclude the arrangements we'd like to see with the news media organisations.¹

¹ Ronald Mizen, 'PM's call with Google takes edge off negotiations', *Financial Review*, 4 February 2021, <https://www.afr.com/politics/federal/pm-s-call-with-google-warms-relations-20210204-p56zg4> (accessed 11 February 2021).

- 1.8 On 5 February 2021, it was reported of Google News Showcase that:
- ...the Treasurer urged the search giant to launch the product and get deals with publishers done” and that “there was an understanding the government may then consider amendments to the proposed mandatory bargaining code which the Silicon Valley-based company has requested”, industry sources said.²
- 1.9 Labor Senators further note that there were also developments and negotiations between Google and the news media which are ongoing. On 4 February 2021, Google announced that Google News Showcase had launched in Australia³ which, as at 11 February 2021, seven Australian publishers, representing more than 25 titles, had signed on to.⁴
- 1.10 Labor Senators note that during the course of the inquiry, there were developments and negotiations between the government and Facebook⁵ and we are cognisant that there may have been other developments and negotiations variously between the government, digital platforms and the media which have not been reported on or brought to the committee’s attention.
- 1.11 Labor Senators are concerned that, at time of writing, a number of questions about designation under the code asked by the Senate Scrutiny of Bills committee have not been answered by the Treasurer and remain outstanding. We are also concerned that Treasury and Department officials were unable to provide satisfactory answers to questions on impact and risk assessment and cost/benefit analysis on the bill at the public hearing. For this reason, Labor

² Miranda Ward and John Kehoe, ‘Google won’t quit Australia: Frydenberg’, *Financial Review*, 5 February 2021, <https://www.afr.com/technology/google-won-t-quit-australia-frydenberg-20210205-p56zxy> (accessed 11 February 2021).

³ Kate Beddoe, ‘Google News Showcase launches in Australia’, *Google Blog*, 4 February 2021, <https://blog.google/products/news/google-news-showcase-launches-australia/> (accessed 11 February 2021).

⁴ Kate Beddoe, ‘Answering your top questions about Google News Showcase’, *Google Blog*, 10 February 2021 (updated 11 February 2021), <https://blog.google/around-the-globe/google-asia/australia/answering-your-top-questions-about-google-news-showcase/> (accessed 11 February 2021).

⁵ Katharine Murphy, ‘Zuckerberg lobbies Josh Frydenberg over plan to force Facebook and Google to pay for news content’, *Guardian Australia*, 31 January 2021, <https://www.theguardian.com/technology/2021/jan/31/zuckerberg-lobbies-josh-frydenberg-over-plan-to-force-facebook-and-google-to-pay-for-news-content> (accessed 11 February 2021); Josh Taylor, ‘Facebook asks Australia to let it make content deals with news outlets before being hit with media code’, *Guardian Australia*, 21 January 2021, <https://www.theguardian.com/technology/2021/jan/21/facebook-asks-australia-to-let-it-make-content-deals-with-news-outlets-before-being-hit-with-media-code> (accessed 11 February 2021).

submitted further questions on notice in writing and we remain concerned that no further analysis or information was forthcoming in the response.

- 1.12 Labor Senators support the intention of the bill which is to address the dominance of digital platforms Google and Facebook for the benefit of the Australian news media. Labor Senators note, however, that the corollary of addressing the dominance of digital platforms may involve potential impacts beyond the news media, the outcomes of which are unknown.
- 1.13 Labor Senators note that the government's indication by media release on 8 December 2020 that the code will initially apply to Google Search⁶ combined with the Minister's subsequent enthusiastic promotion of alternative search engines, Microsoft's Bing and Duck Duck Go, has caused many Australians and small businesses to experience uncertainty and worry as well as express concerns about the impact of the potential withdrawal of Google's search engine from Australia. In addition to submissions to the inquiry, this has been brought to the attention of Labor MPs and Senators by individual constituents and small businesses directly.
- 1.14 Labor Senators note that a broad range of stakeholders, including peak business groups, acknowledge the potential disruption millions of consumers and small businesses during the economic recovery, in the event Google withdraws Search and Facebook withdraws News from Australia in response to the passage of the bill, despite the availability of alternative search engines and social media platforms. Recent reporting referred to the impact as a 'death sentence' for SMEs.⁷
- 1.15 Evidence to the inquiry indicates that, in the event that Google and Facebook withdraw services from Australia, revenue will not flow from these digital platforms to the news media but some mainstream media businesses may benefit from increased direct traffic to and/or advertising on their own news products and services, while small and independent media businesses will lose search/social traffic referrals and media diversity will be undermined.
- 1.16 Labor Senators note there is broad in-principle support for a code and regulation of digital platforms however many stakeholders have serious and specific concerns with the bill as drafted. There is a divergence of views including as between established mainstream media and new and emerging

⁶ The Hon Josh Frydenberg MP and The Hon Paul Fletcher MP, 'News Media and Digital Platforms Mandatory Bargaining Code', *Media release*, 8 December 2020, <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/news-media-and-digital-platforms-mandatory-bargaining> (accessed 11 February 2021).

⁷ David Adams, "Death sentence': Australian businesses damaged during lockdowns could face another hit if Google Search leaves, analysts say", *Business Insider*, 8 February 2021, <https://www.businessinsider.com.au/google-news-media-bargaining-code-small-business-2021-2> (accessed 11 February 2021).

media in accordance with their reliance on search and social media for audiences and revenue.

- 1.17 A range of stakeholders seek amendments to the bill, including peak media industry bodies. We note concerns around unintended consequences, such as relating to the professional standards test as well as the potential to incentivise click bait, and regard these as matters for close consideration up to, including and after the 12-month review of the code.
- 1.18 Labor Senators are pleased at evidence that work on the code to date has improved the responsiveness of digital platforms to the news media. However, we are mindful of evidence that the code does not guarantee any particular outcomes for the media, journalists, citizens or consumers. Media stakeholders are not yet clear on how much, if any, additional revenue may be derived as a result of an improved bargaining position under the code or how much revenue, if any, will be invested in additional journalists or journalism. This underscores the fact that the code is not a 'silver bullet' and that the government must do more to support public interest journalism in Australia.
- 1.19 Data collected by the Australian Competition and Consumer Commission (ACCC) show that between 2008 and 2018, 106 local and regional newspaper titles closed across Australia, representing a net 15 per cent decrease in the number of these publications. These closures have left 21 local government areas previously covered by these titles without coverage from a single local newspaper (in either print or online formats), including 16 local government areas in regional Australia.⁸ Since January 2019, the number of contractions in Australia's public interest news landscape has grown to over 200, according to data from the Public Interest Journalism Initiative's *Australian Newsroom Mapping Project*.⁹
- 1.20 The Australian Communications and Media Authority has confirmed on record that media diversity in regional and remote areas is already at or below the minimum number of voices in 68 per cent of licence areas. The government recently admitted to early warning signs of market failure in regional commercial television broadcasting in the Explanatory Memorandum to the Broadcasting Services Amendment (Regional Commercial Radio and Other Measures) Bill 2020.

⁸ Australian Competition and Consumer Commission, *Digital Platforms Inquiry: Final Report*, June 2019, p. 18.

⁹ Public Interest Journalism Initiative, 'Number of public interest news contractions in Australia tops 200', <https://mailchi.mp/2c3cdb07bebc/map-contractions-rise-above-200>; *The Australian Newsroom Mapping Project*, <https://anmp.piji.com.au/>, (accessed 11 February 2021).

-
- 1.21 Next month marks once year since COVID-19 related closures and suspensions of news titles began to be announced, compounding the closures that had already occurred over the decade prior as a result of digital disruption.
 - 1.22 Labor Senators note that the code is only one of a suite of measures recommended by the ACCC to support public interest journalism. In the time since the ACCC released the *Final Report of the Digital Platforms Inquiry*, in July 2019, the government has failed to address a number of these recommendations, including genuine media reform, stable and adequate funding for the public broadcasters, adequate direct funding, tax incentives and philanthropy measures.
 - 1.23 Labor Senators note the overwhelming evidence before the committee that the government has a lot more to do to support public interest journalism in Australia. This includes support to ensure the ongoing viability of the Australian Associated Press (AAP) as the key wholesale provider of news in Australia and a critical pillar of media diversity. We emphasise evidence that the code does nothing to help AAP newswire and that any notion of 'trickle down' economics under the code is naïve.
 - 1.24 Labor drew the plight of AAP to the government's attention in March 2020, including through Senate Estimates, and called on the government to provide COVID-19 relief funding to the media in April 2020. The government's September 2020 announcement of \$5 million for AAP was late and inadequate. The benefits to democracy of an independent wholesale newswire business are many and we urge the government to make appropriate provision for AAP as a matter of priority.
 - 1.25 Labor Senators are of the view that a strong, high quality and diverse news media sector is essential to a healthy democracy. Equally, we are of the view that a strong, high quality and diverse tech sector is necessary for a healthy networked society and digital economy.
 - 1.26 We are cognisant of the fact that Australia has one of the most concentrated media markets in the world, and that search engines and social media are instrumental in facilitating access for many Australians to a more diverse range of news media, both domestic and international. Australians deserve the best in terms of choice and quality, and we are concerned that any reduction in choice or quality would be to the detriment of Australian citizens and consumers.
 - 1.27 Labor Senators acknowledge the work of the ACCC over the course of the 18 month long Digital Platforms Inquiry and the year-long code oversight and development process, as well as the input of the ACCC's global counterparts, in crafting and informing the bill before the committee.

1.28 Labor Senators affirm that Australian sovereignty should be respected and that Australian law should be well-crafted, proportionate and fair.

Senator Alex Gallacher
Deputy Chair
Labor Senator for South Australia

Senator Jenny McAllister
Member
Labor Senator for New South Wales

Additional comments - Australian Greens

- 1.1 The Australian Greens support the principles of the bill as an important step forward both in protecting public interest journalism in Australia and regulating the power imbalance that big technology companies have in the marketplace.
- 1.2 During the consultation phase on the draft code, the Greens called for the inclusion of the public broadcasters and welcome the inclusion of the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) in the final. Inclusion of the public broadcaster is vital in to ensure that the Code achieves its stated purpose of protecting public interest journalism.
- 1.3 Amendments are required to ensure that the Code is able to protect small and independent publishers and also to ensure that the funds raised through the Code are invested into public interest journalism.

Investment in public interest journalism

- 1.4 The purpose of this code is to help protect and fund public interest journalism, a key pillar of our democracy. Therefore, the revenue publishers receive through the Code must be used to invest in public interest journalism and not be handed out as profits to shareholders or overseas parent companies.

Recommendation 1: That the bill be amended to require news organisations to spend the revenue from the Code on resourcing public interest journalism.

- 1.5 The Code is just one step in protecting public interest journalism in Australia. A newswire service is an essential part of a diverse and healthy news media ecosystem. Funding through the PING fund has supported AAP in the short-term; however the long-term stability is still at risk.

Recommendation 2: That the Government establish a permanent Public Interest News Gathering Trust and ensure that AAP is supported through public funding.

Protection for small and independent publishers

- 1.6 For the Code to be effective it must be able to have a positive impact for small and independent publishers, not just major news corporations. Media diversity is essential for public interest journalism and the collective bargaining provisions in the bill are essential to protect smaller publishers by allowing them to band together to achieve a fair outcome in negotiations with the multinational technology giants.

- 1.7 The Code must cover all publishers that contribute to public interest journalism in Australia. The 12-month review of the Code must provide a clear picture of the impact this policy change will have on small, independent and start up news media publications.

Recommendation 3: That the bill be amended to require the 12-month review of the Code to report on the impact that the Code is having on small, independent and start up publications and the state of journalism in Australia including the number of journalists employed.

**Senator Sarah Hanson-Young
Greens Senator for South Australia**

Appendix 1

Submissions and additional information

- 1 Mr Vint Cerf
- 2 Community Broadcasting Association of Australia
- 3 *Name Withheld*
- 4 Mr Dylan Lindgren
- 5 Mr John Scolaro
- 6 Man of Many
- 7 Dr David Brennan
- 8 Junkee Media
- 9 *Name Withheld*
- 10 Americans for Tax Reform Foundation
- 11 Bundaberg Regional Council
- 12 ScienceAlert
- 13 U.S. Chamber of Commerce
 - Attachment 1
- 14 Internet Association
- 15 The Software & Information Industry Association
- 16 Information Technology Industry Council
- 17 U.S. Government, Office of the U.S. Trade Representative
- 18 GoAutoMedia
- 19 *Name Withheld*
- 20 *Name Withheld*
- 21 Computer & Communications Industry Association
- 22 Mr Ersu Yuceturk
- 23 Ausdroid Media
- 24 Electronic Frontiers Australia
- 25 S4 Capital
- 26 Special Broadcasting Service Corporation (SBS)
- 27 Office of the Australian Information Commissioner (OAIC)
- 28 Australian Press Council
- 29 Free TV Australia
- 30 Media Entertainment & Arts Association (MEAA)
- 31 A/Prof Rob Nicholls
- 32 Australian Associated Press (AAP)
- 33 Public Interest Journalism Initiative & The Judith Neilson Institute for Journalism and Ideas
- 34 Nine
- 35 Ai Group
- 36 The Australia Institute's Centre for Responsible Technology

- 37 Business Council of Australia
- 38 Google
- 39 Guardian Australia
- 40 Broadsheet Media
- 41 Centre for Media Transition, University of Technology Sydney
- 42 The Conversation
- 43 Asia Internet Coalition (AIC)
- 44 Twitter
- 45 Country Press Australia
- 46 Sir Tim Berners-Lee
- 47 Digital Rights Watch
- 48 Atlassian
- 49 Australian Broadcasting Corporation (ABC)
- 50 Facebook
- 51 Tradelink
- 52 News Corp Australia
 - Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4
 - Attachment 5
- 53 Dr Bronwyn Kelly
 - 53.1 Supplementary to submission 53
- 54 Reset Australia
- 55 Vuly Play

Answer to Question on Notice

- 1 Australian Broadcasting Corporation (ABC): Answers to questions on notice from the public hearing in Canberra on Friday 22 January 2021, received 29 January 2021
- 2 Junkee Media: Answers to questions on notice from the public hearing in Canberra on Monday 1 February 2021, received 2 February 2021
- 3 Google: Answers to questions on notice from the public hearing in Canberra on Friday 22 January 2021
- 4 Google: Answers to questions on notice from the public hearing in Canberra on Friday 22 January 2021 - Google News Showcase
- 5 Google: Answers to written questions on notice
- 6 Facebook: Answers to written questions on notice
- 7 The Treasury: Answers to questions on notice from the public hearing in Canberra on Friday 22 February 2021

Tabled Documents

- 1 Australian Community Futures Planning - Dr Bronwyn Kelly: Tabled document from the public hearing in Canberra on Monday, 1 February 2021
- 2 Australia Institute Centre for Responsible Technology: Tabled document from the public hearing in Canberra on Monday, 1 February 2021
- 3 Dr Belinda Barnet: Opening statement from the public hearing in Canberra on Monday, 1 February 2021
- 4 The Treasury: Opening statement from the public hearing in Canberra on Monday, 1 February 2021
- 5 Australia Institute Centre for Responsible Technology: Tabled document from the public hearing in Canberra on Monday, 1 February 2021

Appendix 2

Public hearings

Friday, 22 January 2021

Main Committee Room

Parliament House

Canberra

Google

- Ms Melanie Silva, Managing Director & Vice President of Australia New Zealand
- Ms Lucinda Longcroft, Director of Government Affairs and Public Policy Australia

Facebook

- Mr Josh Machin, Head of Public Policy Australia
- Mr Simon Milner, Vice President of Public Policy Asia-Pacific

News Corporation

- Ms Georgia-Kate Schubert, Head of Policy and Government Affairs
- Mr Campbell Reid, Group Executive Corporate Affairs, Policy & Government Relations

Australian Associated Press

- Ms Emma Cowdroy, Chief Executive Officer
- Ms Jonty Low, Chair

Nine

- Mr Chris Janz, Chief Digital & Publishing Officer
- Ms Rachel Launders, General Counsel & Company Secretary
- Ms Victoria Buchan, Director of Communications & Public Relations

Guardian Australia

- Mr Dan Stinton, Managing Director
- Ms Lenore Taylor, Editor

Free TV

- Ms Bridget Fair, Chief Executive Director
- Mr Ross Mitchell, Director Broadcasting Policy
- Mr Greg Hywood, Chairman

Australian Broadcasting Corporation (ABC)

- Mr Mark Tapley, Director Strategy

- Mr Scott Gamble, Manager Social Media Strategy
- Mr Carl Toohey, Senior Strategist

Special Broadcasting Service Corporation (SBS)

- Ms Natasha Eves, External Affairs Manager
- Ms Sarah Yassien, Director Corporate Strategy
- Ms Clare O'Neil, Director Corporate Affairs
- Ms Mandi Wicks, Director News & Current Affairs

Australian Competition and Consumer Commission

- Mr Rod Sims, Chair
- Ms Kate Reader, General Manager – Digital Platform Branch

Monday, 1 February 2021

Committee Room 2S1

Parliament House

Canberra

Media Entertainment & Arts Association (MEAA)

- Mr Adam Portelli, Director Media

Reset Australia

- Ms Chris Cooper, Executive Director
- Mr Matt Nguyen, Policy Lead

Dr Bronwyn Kelly

Country Press Australia

- Mr Bruce Ellen, President
- Mr Paul Thomas, Director

The Australia Institute: Centre for Responsible Technology

- Mr Peter Lewis, Director

Solstice Media

- Mr Eric Beecher, Chairman

Junkee Media

- Mr Neil Ackland, Chief Executive Officer
- Mr Rob Scott, Editorial Director

Dr Belinda Barnet

The Treasury

- Ms Meghan Quinn, Deputy Secretary
- Mr Tom Dickson, Assistant Secretary, Corporations Branch
- Ms Erin Wells, Assistant Secretary

Department of Infrastructure, Transport, Regional Development and Communications

- Ms Pauline Sullivan, First Assistant Secretary
- Mr James Penprase, Assistant Secretary–Broadcasters and COVID-19 Response Taskforce