

Submission to the ACCC

on the proposed

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

28 August 2020



Overview

We welcome the opportunity to submit comments to the ACCC concerning the Department of Treasury and ACCC's proposed *Treasury Laws Amendments (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*.¹

Digital Rights Watch did not submit comments earlier in the consultation process, but we have been following the ACCC inquiry into Digital Platforms with great interest and we are encouraged by the final report's extensive emphasis on privacy and data protection in order to protect consumers in the digital era.

Along with many civil society organisations we are concerned about the freedom of Australian press. The diversity and sustainability of an open and free press are essential pillars of our democracy, and we observe with great concern increasing powers of law enforcement which threaten that integrity. Some of our past work related to this submission:

- [*PJCIS inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press*](#)
- [*UN inquiry into freedom of expression in telcos and the internet*](#)
- [*A report on the erosion of press freedom in Australia*](#)
- [*UN Human Rights Council Australia Universal Periodic Review*](#)

Digital Rights Watch

Digital Rights Watch is a charity organisation founded in 2016 whose mission is to ensure that people in Australia are equipped, empowered and enabled to uphold their digital rights. We stand for Privacy, Democracy, Fairness & Freedom in a digital age. We believe that digital rights are human rights which see their expression online. We educate, campaign, and advocate for a digital environment where individuals have the power to maintain their human rights.

¹ The full text of the draft Bill:

<https://www.accc.gov.au/system/files/Exposure%20Draft%20Bill%20-%20TREASURY%20LAWS%20AMENDMENT%20%28NEWS%20MEDIA%20AND%20DIGITAL%20PLATFORMS%20MANDATORY%20BARGAINING%20CODE%29%20BILL%202020.pdf>

General remarks

At Digital Rights Watch we welcome the findings of the ACCC Digital Platforms inquiry which makes extensive recommendations regarding the need for a data protection framework and improved protections for privacy in order to protect Australian consumers.² We also welcome the effort to “promote competition, enhance consumer protection and support a sustainable Australian media landscape in the digital age.”³ However, we do not believe that the draft Bill as it is ensures this adequately. We are concerned that the first actionable outcome of the extensive ACCC inquiry does not focus on addressing the most pressing systematic data collection and exploitation models that digital platforms thrive on, rather, it seeks to make sure that news corporations benefit from them.

We are particularly concerned by the focus on Google and Facebook in the draft Bill and the lack of an objective way to nominate platforms in the future.⁴ Any legislation that targets a specific service risks inflicting damage on the competitiveness of the sector. By giving this sort of privileged access to digital platforms to news corporations, the draft Bill actually perpetuates the collection and abuse of user data by locking in the business model and making more parties fiscally reliant upon it. It is this act—the generation of extraordinary revenue through targeting of advertising based on data accumulated from users of ‘free’ services—that should be regulated, regardless of the organisation undertaking it. It also inadvertently privileges Google and Facebook in setting them up as the dominant players in this space—under the draft Bill news corporations will have a steady financial incentive not to diversify their online presence across smaller platforms and providers, or move away from these advertising services and practices.

Furthermore, while these digital platforms have the most visible presence through which individuals and news corporations interact with the internet, there is a thriving industry of data brokers that aggregates and resells user data. We iterate the need for a wholesale approach to address the need for improved data protection and stronger privacy protections for Australians. Internationally, we are falling behind in addressing the harms caused by the business models of digital platforms.

We are concerned that such a concrete definition of “*news content*” as presented in the draft Bill excludes countless actors in the news ecosystem (consolidating power with traditional news media players) and will damage press freedom in the future. This is particularly concerning for small enterprises, commentators or independent investigative journalists. Without access to the same sort of understanding of the digital landscape that news corporations would get under the draft Bill as well as the remuneration large news will be

² The ACCC Digital platforms final report provides several recommendations on how to strengthen the rights of consumers in the digital space, including stronger privacy protections and data rights: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

³As described in the explanatory memorandum to the draft Bill: <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/draft-legislation>

⁴ This seems to be at the discretion of the Treasury in the draft Bill.

able to negotiate, it is likely to force smaller actors to integrate into large outlets or remain under-funded and under-represented.

This concentration of negotiation power is particularly worrying when it comes to “original covered news content.” At the very least, any such list should be maintained and updated through a multistakeholder advisory model—not at the discretion of the largest players as is the case in the draft Bill.

Finally, in terms of creating a sustainable media landscape, we would like to draw attention to the recommendations from the Senate Select Committee on the Future of Public Interest Journalism which presented its final report in February 2018.⁵ There are structural challenges to the Australian media landscape which remain unaddressed, including highly concentrated media ownership, a sustainable and adequate funding model for community broadcast services (which we recommend including as a beneficiary from any sort of negotiations with digital platforms in our recommendations below), and protection for investigative journalists and whistleblowers.

Recommendations

- **Prioritise addressing the harmful business model of digital platforms by focusing on consumer protection.** There are several key recommendations regarding data protection and privacy in the ACCC Digital platforms inquiry final report including the need to strengthen the protections in the Privacy Act.⁶ The final report correctly noted that consumers are left at the mercy of predatory data collection practices and that a regulatory framework would incentivise innovation which protects, rather than exploits, user data.
- **Focus on creating a systemic solution which supports a diverse and dynamic space for all types of journalism in Australia** such as the Independent Future Fund for Journalism.⁷ The Australian news ecosystem will continue to deteriorate and suffer if independent journalists, small, local, & community radio and publishing, as well as POC or queer content-creators aren't included in the solution. Established news corporations do not represent these communities and their viewpoints adequately.⁸
- **Adequately fund and support the public broadcasters.** Public broadcasters need not compromise the delivery of journalism in the public interest in response to lost

⁵ The final report as well as summarized recommendations are available here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism/PublicInterestJournalism/Report

⁶ The ACCC Digital platforms final report provides countless recommendations about strengthening consumer rights in the digital space: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

⁷ Proposal for an Independent Future Fund for Journalism by Andrew Jaspán can be viewed here: <https://www.accc.gov.au/system/files/Andrew%20Jaspán%20%28March%202019%29.pdf>

⁸ Australian audiences are let down by TV networks' lack of diversity: <https://www.news.com.au/entertainment/tv/australian-audiences-are-let-down-by-tv-networks-lack-of-diversity/news-story/53ca210f589f0e7bc01af4b3c27e1205>

advertisers or other revenue. The ABC and SBS are the only professional news sources accessible to many regions and communities. The ABC and SBS have long been the most trusted source of news for people in Australia, and are critical for countering the rise of misinformation. Addressing revenue challenges for privately-owned news corporations is an important step in protecting public interest journalism, but will be undermined by continued cuts to ABC and SBS.

- Broaden and fix the definition of news covered by the current proposal. It should be the responsibility of the ACCC (or perhaps ACMA) to provide broad access to better negotiating powers to many actors who do not qualify—in size or in scope—under the draft Bill. Individuals and organisations who engage in journalism and produce news content, or even those who provide commentary (including comedy and satire) all form a dynamic news media environment and should have access to the same remuneration and understanding as news corporations do under the draft Bill.
- Do not fixate the proposal to Google and Facebook, but broaden the scope of “*digital platform service*” to create a model which enables other platforms to emerge in this space with similar functionality (influence, advertising practices, impact on media providers, etc). As it stands, the draft Bill consolidates the market dominance that the platforms enjoy and de-incentivises the news corporations from extending their advertising and focus across other platforms.
- Do not allow individual news corporations to negotiate special terms with the platforms directly. Even if small producers of “*core news content*” coordinate, they will not be able to approach the bargaining table with the platforms with nearly as much weight as the established news corporations which have marketing and legal departments that smaller outlets often do not. This perpetuates and consolidates the inequity posed by digital platforms in this space. Having a unified approach for the entire sector would also allow for the inclusion for public interest journalism to be included without risking undue influence or impact on their work.

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