

Friday, May 13, 2022

Review by The Treasury of News Media and Digital Platforms Mandatory Bargaining Code (the Code)

13 May, 2022

We acknowledge and are grateful for the extension to the deadline for the review in order to enable this submission.

1. Overview of Croakey Health Media

Croakey Health Media is an innovative non-profit public interest journalism organisation with a focus on public health, health equity, and the social determinants of health. We focus on communities and health issues that are under-served by mainstream media and policy, including rural, regional and remote communities. Aboriginal and Torres Strait Islander people provide leadership for our work, including through our governance. Our board is chaired by a leading Aboriginal health academic, Professor Megan Williams, who is Wiradjuri through paternal family and Head of Girra Maa, the Indigenous Health Discipline in the School of Public Health, Faculty of Health at UTS. Details on our board members can be seen [here](#).

Croakey Health Media's membership is based on our social journalism team, a multi-disciplinary network of journalism and health practitioners located across Australia. The members of our social journalism team can be seen here, and include Aboriginal and Torres Strait Islander and non-Indigenous members. Croakey Health Media is a national organisation, headquartered in regional Tasmania and is a registered health charity. We provide a range of social journalism and professional services to enable communities, policy-makers and practitioners to improve health and wellbeing, with a determined focus on improving health equity. We take a local, regional, national and global focus, and bring a health-in-all-policies lens to our reporting.

Croakey Health Media's public interest journalism activities are supported by a blended funding model, including sponsorship, donations, subscriptions, the provision of professional services, advertising, and paid journalism activities, including the Croakey Conference News Service. Our funders and supporters are leading health organisations. As an organisation, one of our five strategic priorities is to create a sustainable environment for public interest journalism, acknowledging the importance of public interest journalism for contributing to our vision, that "a vigorous and sustainable public interest journalism sector contributes to the health and wellbeing of people, families, communities, policies, societies and the environment".

As an organisation, we advocate for policy reform to support a sustainable public interest journalism sector, through making submissions to reviews like this, and through journal and book publications, research, and presentations to conferences. We are also proactive in engaging with other public interest journalism publishers and organisations to help build momentum for better policy. We work to increase public awareness of the challenges facing public interest journalism and its important role for the health of communities, policies and democracy. Journalistically, we cover public interest journalism as a critical determinant of health.

See our archives on journalism as a determinant of health:

<https://www.croakey.org/category/public-health-and-population-health/public-interest-journalism/>

And on the market power of digital platforms as a determinant of health:

<https://www.croakey.org/category/digital-platforms/>

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2. Addressing the review and questions in the consultation paper

Q: The review seeks stakeholder views on cases where digital platforms and news businesses have not been able to reach commercial deals.

We are listed on the ACMA register as an eligible business under the Code; however, we do not expect it will result in any revenue. On 21 December 2021, Meta (Facebook) executives directly advised us they would not enter into a contract with Croakey under the Code. Google has not officially replied to our correspondence, but we have heard indirectly that they do not intend to enter into a deal with us.

As a small, under-resourced organisation, we have invested a great deal of our scarce resources in contributing to policy discussions around the Code, to meeting with other publishers and related negotiations around the code, and to making approaches to Meta and Google. We have had absolutely no reward from this considerable investment of our time and effort, which has had a big impact on our costs and diverted our attention and time away from our core business of producing and trying to sustain our public interest journalism. We encourage this review to consider the unfair costs of this process on small publishers that are not supported by legal and HR teams and do not have the resources of large media organisations. We have been disproportionately penalised by this process and have reaped no financial rewards from it. Rather than helping to sustain our public interest journalism, it could be argued that this unproductive and time consuming process has undermined our capacity to remain sustainable.

Here we are again, investing our scarce resources in providing feedback to this review; but after our experiences of the past few years, this is without any expectation that our input will be heard or make any difference to policy settings and outcomes.

We note that submissions to the recent regional journalism inquiry have presented mixed views on the Code (see: <https://www.croakey.org/the-crisis-in-regional-journalism-why-its-a-big-health-concern-and-some-suggested-solutions/>). Some publishers have received funding but note that the contractual requirements from Meta and Google have been extremely onerous and required the publishers to invest in infrastructure and staff to manage the process, while others have not obtained funding under the Code. Our experience, and submissions to that inquiry, underscore the importance of independent, rigorous evaluation of the Code processes and outcomes. This is difficult when so many of the agreements are shrouded in “commercial in confidence” arrangements.

Q: The review seeks stakeholder views on any other impacts of commercial deals on the Australian news sector (for example, on competition in media markets).

Surely the question here should be whether the code has contributed to a more diverse and sustainable media landscape, rather than its impact on media markets. This is the key policy question confronting policymakers who understand the importance of a diverse and pluralistic public interest journalism sector for democracy.

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It seems clear that large media organisations, especially the corporate entities that currently dominate the media landscape in Australia, have reaped most benefit from the Code and that many smaller publishers have not benefited. That a high quality publication like The Conversation has not been able to reach an agreement with Facebook speaks volumes about the inadequacies of this policy process.

The lack of transparency about the agreements reached under the Code is problematic, and this review should aim to ensure the process and outcomes are more transparent. This review should explicitly detail the outcomes of Code agreements so that the Australian public can understand:

- Which media organisations have been remunerated under the Code and for how much and any related arrangements or agreements.
- Which media organisations have not been remunerated under the Code, despite applying to the digital platforms for an agreement.
- Which media organisations did not apply to the register despite being eligible.
- Which media organisations were judged not eligible to be on the register and why.

Q: The review seeks stakeholder views on the other forms of support made available by digital platforms to individual news businesses and the Australian news sector more broadly.

Meta and Google have each set up various arrangements and partnerships with journalism organisations and publishers, clearly with the aim of being able to undermine Code and resist regulatory pressure. It enables them to make the argument they are supporting journalism, and therefore should not be subject to regulatory intervention. Many journalists are concerned, however, about the ethical, conflict of interest, and public interest concerns raised by these relationships and arrangements. When the immense market power of digital platforms and their history of problematic conduct should be the subject of journalistic investigation and inquiry, it is not appropriate for journalism organisations to be in such partnerships.

Q: Are there any issues relating to the Code, not covered by the consultation questions above, that stakeholders wish to bring to the attention of the review?

We note that our June 2020 submission to the Code's development argued that it should be based upon the principles of equity, diversity, transparency and accountability. These principles clearly have not guided the development or implementation of the Code. We urge that they be considered in this review and in any further, related media policy development.

3. Further reading

Below, we summarise Croakey Health Media submissions since 2019, and hope they may be useful for informing this review.

3.1. Submission, House of Representatives Standing Committee on Communications and the Arts, Inquiry into Australia's regional newspapers, February 2022

Available at: https://www.croakey.org/wp-content/uploads/2022/02/CroakeyHealthMediaSubmission_4Feb2022.pdf

We share concerns raised by many others – including researchers and the Media Entertainment and Arts Alliance – about the lack of transparency around the initiative's outcomes, including whether the deals will be used to fund journalism. We note that similar concerns have also been raised in recent reports, including by the Reuters Institute and the Columbia Journalism Review). Serious issues around conflict of interest and related public interest concerns are raised in this 2021 Croakey article, Media deals behind closed doors: public interest or private benefit? (<https://www.croakey.org/media-deals-behind-closed-doors-public-interest-or-private-benefit/>)

- Future policy development should be based around the needs of communities rather than the interests of corporate media organisations and should draw upon the many useful policy recommendations from previous inquiries, including:
- An ongoing grants program for public interest journalism, including a specific focus on areas of market failure (whether geographic or other communities, or issues-based). As Croakey noted in our 2017 submission to a Senate inquiry into the future of journalism: “Funding mechanisms could include tax offsets for investors, direct government support, incentives for philanthropists and a levy on Google, Facebook or other companies that profit from the advertising revenue that used to fund mainstream media, but pay little tax.”
- A clear, transparent pathway for establishing as a non profit public interest journalism organisation with DGR status. Governments and other stakeholders should support the growth and development of the non-profit sector through the development of a peak body representing the sector. This would also increase our capacity to contribute usefully to policy and to support other organisations seeking to meet community needs in the face of market failure (such as is outlined in the submissions to your inquiry from Alice Springs).
- Regulation of digital platforms should be approached holistically. At present it is very siloed. Efforts to regulate monopoly power, the dissemination of misinformation, disinformation and hate speech, the dissemination of unhealthy marketing and sales practices, breaches of privacy and other forms of exploitation should be approached in tandem with efforts to support and sustain a more vigorous, innovative and diverse public interest journalism sector.

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3.2. Submission to Senate Environment and Communications References Committee Inquiry into the state of media diversity, independence and reliability in Australia, 2020

Available at: <https://www.croakey.org/wp-content/uploads/2021/02/Sub-24-1.pdf>

Small, independent and community news outlets face many barriers to operation, including lack of funding and structural support. The development of a healthy non-profit public interest journalism sector could help many communities have better access to the roles of public interest journalism.

Policies could:

- Enable innovation in the development of new models to better meet the needs of discrete communities, whether these be geographical communities or communities of interest
- Provide a clear, affordable pathway for the set-up of non-partisan, non-profit journalism models, including access to DGR status.
- Support and fund the development of a voice for the sector through funding for an organisation to advocate for non-profit journalism and to help educate the community, philanthropists and other funders about the sector's role.

We suggest the following principles to underpin public investment in media organisations:

1. Investment should be driven by communities' needs with a focus on equity, meaning that those communities who are now most under-served should receive special attention. An equitable process ensures that support is commensurate with need.
2. Investment should support a diverse media landscape but this means more than supporting a variety of models of organisations and ownership. It also means ensuring there is diversity in representation, not only in editorial operations, but also in governance.
3. Institutional racism must be addressed, and an organisation's cultural safety should be considered as a criteria for funding.
4. Organisations should be non-partisan and have a clear commitment to transparency and journalistic ethics and principles.

3.3. Submission, ACCC consultation, Mandatory bargaining code from Croakey Health Media, 2020

Available at: https://www.croakey.org/wp-content/uploads/2020/07/ACCC_Consultation_submission_June5_2020.pdf

Public interest journalism is not simply another commercial product. It is an under-served public good in Australia, and some communities, geographic areas and topics are especially under-served. The COVID-19 pandemic has exacerbated the crisis in public interest journalism globally and also in Australia, revealing the failure of existing policy frameworks to ensure a sustainable future for this essential service. During the pandemic, news rooms around the world have suffered cuts and closures at the same time as demand for public interest journalism has increased dramatically.

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The pandemic has highlighted both the importance and the fragility of some of the key roles of public interest journalism:

- scrutinising and holding governments and other powerful stakeholders to account;
- contributing to informed communities and helping to inoculate them against misinformation in all its forms;
- communicating individual actions that will impact on public health;
- disseminating local information for local decision making; and
- providing a platform for diverse communities to ensure policies are responsive to their needs.

The mandatory code between media organisations and the digital platforms is a critical opportunity for addressing matters of profound and wide-reaching public importance. Explicit efforts are needed to ensure civil society is able to contribute to the code's development, implementation and review. This will require determined attention to issues of procedural justice and equity, as many civil society organisations may not have commensurate resources to contribute. These matters are too important to leave as negotiations between media organisations and the digital platforms. Public interest, rather than commercial imperatives, should be centred in the processes and the outcomes.

We know from policy development in other areas, such as healthcare policy, that developing structures and mechanisms to enable community voices to contribute (through the establishment and funding of bodies such as Aboriginal Community Controlled Health Services and the Consumers Health Forum of Australia, for instance) provides a counter-balance to the power of vested interests in determining policy outcomes, and leads to more effective policies that represent better investment for taxpayers and wider communities. Media policy development – which has often been driven by the commercial interests of established corporate media organisations, rather than the public interest – could learn from such efforts in health policy to develop structures and processes to support the contributions of community interests.

The negotiations and outcomes for the code should privilege public interest journalism, rather than generic news content. A broad understanding of public interest journalism should be adopted rather than a narrow definition limited to a specific form of public interest journalism, as sometimes happens, viz a viz investigative journalism. Public interest journalism (as defined in the Croakey Health Media strategic plan) “gives people the information they need to take part in the democratic process. It informs and contributes to policy and practice. It holds power to account, and amplifies the voices of those who are not well served by the current distribution of power”. It may have a local, national or global focus. Its roles are particularly important in the digital era, where misinformation has become a critical threat to the health of democracies, communities and people.

Public interest journalism has the ability to provide expert, in-depth analyses of issues at a time when mainstream media journalism is becoming less specialised, and less able to provide in-depth, rigorous coverage of science, medical, and health issues, as well as the wider determinants of health and wellbeing. Public interest journalism can provide a

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forum for the discussion of ideas and policies, and the dissemination of knowledge.

The non-profit public interest journalism sector is under-developed in Australia; structural development of this sector should be supported. This will also bring benefits for policy development and related processes.

The allocation of revenue under the code should incorporate wider considerations than simply the revenue of participating media organisations. Metrics are needed to consider wider public interest impacts, with special consideration given to under-served geographic areas, communities, and topics.

The playing field currently privileges large media organisations and disadvantages independent and smaller media organisations, which are not in a position to negotiate equitably within the media industry, or with Google and Facebook. The digital platforms should be required to set aside specific and separate resources for smaller media organisations in order to have these conversations. Governments or government agencies should ensure structural support is available to ensure equitable processes and outcomes.

3.4. Response to ACCC Digital Platforms Inquiry from Croakey Health Media, 2019

Available at: <https://www.croakey.org/wp-content/uploads/2020/08/Croakey-Health-Media-February-2019.pdf>

We are concerned that the ACCC's preliminary report has omitted any significant consideration of the potential for supporting the development of non-profit journalism models. Our experience with Croakey Health Media is that the current policy environment is not supportive of such models, despite their potential to contribute significantly to the public interest and to compensate for market failure in the provision of public interest journalism services. We encourage the inquiry to engage with the literature around non-profit journalism and how it is supported in other countries. See, for example, Dr Bill Birnbauer's recent book, *The rise of non-profit investigative journalism in the United States* (<https://www.routledge.com/The-Rise-of-NonProfit-Investigative-Journalism-in-the-United-States/Birnbauer/p/book/9781138484474>).

Clearly defined, low-cost pathways are needed to enable the development of innovative non-profit models for journalism in Australia, supported by measures such as enabling access to Deductible Gift Recipient status, and providing incentives for philanthropists, communities and others to support non-profit models of public interest journalism and to engage with the development of new models of public interest journalism.

Croakey Health Media welcomes the ACCC's interest in developing incentives to support public interest journalism but respectfully suggests that a more wide-ranging approach be taken. These suggested measures appear to centre traditional media businesses rather than supporting innovation in public interest journalism. Digital disruption has enabled journalism to disintermediate from traditional media companies. This is enabling innovation and the development of new models of journalism that potentially can be more responsive to the needs of communities. It would be helpful if the ACCC could

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explicitly consider incentives to enable innovation in public interest journalism to meet the needs of under-served communities and issues.

In conclusion, we would like to see policy reform that supports public interest journalism, especially that which is provided by social enterprises, community-based organisations, non-profit organisations, and start-ups. It is important that policy reform does not inadvertently discourage innovation or disadvantage or exclude small independent media.

3.5. Submission to Senate Select Committee inquiring into the future of public interest journalism, 2017

Available at: https://www.croakey.org/wp-content/uploads/2020/08/sub_25.pdf

We agree with the statement to this inquiry by independent journalist Michael West that: “There is as yet however no reliable business model to fund journalism and my personal experience is testament to this” (<https://www.michaelwest.com.au/opening-statement-to-senate-inquiry-into-journalism/>). We also agree with the Public Interest Journalism submission to this inquiry that the crisis in public interest journalism in Australia justifies a cohesive and vigorous public response, both in providing direct government support and also in taking measures to encourage private investment and philanthropic support. https://www.croakey.org/wp-content/uploads/2020/08/sub_25.pdf

In particular, we support the recommendations for Deductible Gift Recipient (DGR) status for donations supporting public interest journalism, and for the establishment of a production fund to support independent public interest journalism. Funding mechanisms could include tax offsets for investors, direct government support, incentives for philanthropists and a levy on Google, Facebook or other companies that profit from the advertising revenue that used to fund mainstream media, but pay little tax.

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Queries about this submission should be directed to Dr Melissa Sweet, Editor-in-Chief of Croakey Health Media. I thank and acknowledge Chief Operating Officer Laurell Grubb for her input.