

Submission
ACCC consultation
Draft mandatory bargaining code
from Croakey Health Media

28 August, 2020

CROAKEY HEALTH MEDIA

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1. Introduction

This submission is from the non-profit public interest journalism organisation, Croakey Health Media.

We express our sincere thanks to the ACCC for the opportunity to comment on the draft code governing commercial relationships between media publishers and the digital platforms, Facebook and Google. We also acknowledge and thank the ACCC for including Croakey Health Media in a roundtable consultation on 21 August, 2020.

2. Background

An in-depth overview of the history and activities of Croakey Health Media was provided in our **submission** to the ACCC Digital Platforms Inquiry on 19 February 2019, with an update provided in our **5 June submission** on the consultation paper.

Croakey Health Media is contributing this submission for two reasons:

1. As outlined in our **strategic plan**, one of our key priorities is: **Create a sustainable environment for public interest journalism**. Our strategic plan recognises that we are part of a news ecosystem, and that: “To thrive, we need to also support and contribute to the development of a more sustainable environment for public interest journalism generally. This is also in line with our mission, given the importance of public interest journalism as a determinant of health”. We publish regular articles on public interest journalism, as a key public health issue. See our related **archive of stories**. This submission therefore is part of our wider mission of advocating for a healthy public interest journalism sector.
2. As a small, non-profit public interest journalism organisation, our financial sustainability is precarious. The pandemic has further undermined our sustainability, at a time when evidence-based public health news that prioritises the needs of diverse communities is critically important. **If the Code enables equitable participation of small media organisations, this could make a real difference to our capacity to survive.**

3. General principles

This submission is underpinned by the principles of equity, diversity, transparency and accountability.

Equity: An equitable process ensures that support is commensurate with need.

We argue that the code and associated processes should be equitable in two ways: to enable smaller and less powerful media organisations to benefit from the code; and to consider the needs of communities currently under-served by public interest journalism, whether they be communities with shared interests or backgrounds, or from a particular geographic location.

Diversity: The concentrated nature of corporate media in Australia is not healthy for democracy. The **lack of diversity** in the mainstream media sector, referring to representation in organisational and editorial governance, is also unhealthy for democracy, and disadvantages the sector, the public and the policy process. We argue that the code and associated processes should seek to increase diversity in the Australian media.

Transparency and accountability: It would be more than ironic if processes intended to benefit public interest journalism are not transparent or accountable. The development and implementation of the code is a significant public policy issue of global significance. A considerable investment of public resources is involved. We argue that the processes and outcomes of the code must be transparent and accountable. How else can we judge the impact of the code, and whether it has led to equitable and useful outcomes in the public interest?

4. Specific issues

4.1. The Government's decision to exclude the ABC and SBS from remuneration under the code is inequitable and disadvantages the many communities that rely upon these broadcasters as an essential service, as demonstrated most powerfully during the pandemic and recent bushfires crisis. It is particularly unfortunate given the funding constraints affecting these critically important public institutions. Croakey Health Media urges the ACCC to advocate to the Government to change its position on this matter.

4.2. The proposed revenue threshold of \$150,000 (section 52G) to help determine media eligibility to participate in the code will exclude many small and innovative organisations providing valuable journalism services to communities. It will also disadvantage those communities, often in rural and regional areas, relying upon small, community-based media. It will also constrain the development of a more diverse media sector by failing to provide incentives for start-ups. This is an artificial threshold that does not appear to be based upon any evidence-based assessment of what organisations (and therefore communities) would be excluded from participating in the code. We strongly recommend there should be no revenue threshold. If there needs to be a threshold of some sort, we suggest it be structured around an assessment of the regularity of the production of public interest journalism.

4.3. The definitions in section 52A of "core news content" and "covered news content" are restrictive and do not reflect an understanding of the nature of contemporary journalism. For example, Croakey Health Media is a public interest journalism organisation, doing the work of journalism, but many of our contributors are not journalists. They may be researchers, clinicians or NGO employees with appropriate content expertise. Journalists are involved in commissioning, editing and publishing such articles, which perform the roles of journalism. Additionally, we practise journalism as a multidisciplinary team effort, and urge that the code err on the side of inclusion rather than exclusion in these definitions. Rather than "is created by a journalist", it would be more accurate to say "journalist/s or people fulfilling the roles of journalism are involved in its production". This change of definition is important for equity and diversity.

4.4. The costs of participating in code processes and arbitration will be prohibitive for many small media organisations, both in terms of dollars and human resources. We call for pro bono arbitration and the waiving of any such associated costs for small media organisations, and for structural support to enable us to participate in collective bargaining processes. This could involve the appointment of a lawyer or

other appropriately qualified professional to provide dedicated support to small media organisations through the process. Another option would be for a body to be established under the legislation to support, facilitate and auspice negotiations and arbitration on behalf of the independent and non-profit public interest journalism sector.

4.5. We urge the ACCC to more explicitly embed equity considerations into the final code, with opportunity for regular review and reporting from an external committee representing public rather than industry interests.

5. Conclusion

We endorse the points made previously in a joint submission by the Public Interest Journalism Initiative and the Judith Neilson Institute for Journalism and Ideas that more than the code “is needed to ensure the survival and sustainability of public interest journalism in Australia”.

Their submission said: “Multiple policy levers (short and long-term) must be used to address the seriousness and extensiveness of the problems facing public interest journalism in this country. The levers across media, digital platforms, philanthropy, and government can intersect and complement one another, to ensure a sustainable public interest journalism eco-system in Australia... Philanthropy remains an under-utilised resource in Australia, and with the appropriate support and encouragement could emerge as an important funding source for public interest journalism, particularly in rural and regional communities.”

We urge the ACCC to advocate for wider policy reform to support sustainability, innovation and development in the public interest journalism sector. We stress the need for structural and policy support to help develop the fledgling non-profit sector, and note the joint submission by First Nations Media Australia and Community Broadcasting Association of Australia highlighting the importance of not-for-profit journalism, in contributing to the diversity of views represented in the Australian media landscape.

Finally, we note **recent comments** by Professor Allan Fels, Chair of the Public Interest Journalism Initiative, suggesting a digital tax as an alternative process. This is an option under consideration in other countries and Croakey Health Media would also like to see it explored in Australia.

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