

2 April, 2024

**Submission to ACCC consultation  
News Media and Digital Platforms Mandatory Bargaining Code**

ACCC ref: PRJ1004221

**Submission by Croakey Health Media**

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

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## 1. Key points

Croakey Health Media appreciates the opportunity to contribute to this consultation by the ACCC in response to the Assistant Treasurer's request for advice on:

- whether a significant bargaining power imbalance exists between Meta in respect of the Facebook and Instagram services and Australian news businesses;
- the extent to which covered news content of Australian news businesses are made available on these services; and
- implications for the Australian news media sector of any proposed designation determination of Meta in respect of its Facebook and Instagram services.

Croakey Health Media makes this submission in a dual capacity: as an independent media organisation with a direct and urgent financial interest in the development of media policy that better supports and develops a diverse media landscape; and as a public health news organisation that advocates for and reports on public interest journalism as an important health matter, especially in an era where misinformation and disinformation are massive threats to public health, nationally and globally (<https://www.croakey.org/wp-content/uploads/2024/01/WEF The Global Risks Report 2024.pdf>).

Croakey Health Media is listed on the ACMA register as an eligible business under the Code. However, we have not received funding under the Code; indeed, our participation in this policy process has been a significant cost and burden on our operations. On 21 December 2021, Meta (Facebook) executives directly advised us they would not enter into a contract with Croakey under the Code. Google did not officially reply to our correspondence, but we heard indirectly that they do not intend to enter into a deal with us. In any case, as a not-for-profit media organisation that is transparent about our funding sources and arrangements, it would have been difficult for us to enter into any such commercial agreements with these companies, given that these agreements have not been transparent or open to public scrutiny.

Croakey Health Media is a member of the Local and Independent News Association (LINA). We understand that very few, if any, LINA members have benefited under the Code.

Below we make three key recommendations for the ACCC and Government.

### **1. The Government should conduct an urgent review of the impact of the Code – with a focus on media diversity and sustainability – and explore alternative policy processes and outcomes.**

In December 2023, the Government committed to commission a further review of the Code after four years of its operation in early 2025.

(<https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/government-implement-all-recommendations-news-media>)

We urge the Government to bring forward this review as a high priority. We note that the conclusions of Treasury's Review of the Code in 2022 were overly optimistic in concluding that the Code had been a success (<https://treasury.gov.au/publication/p2022-343549>). We also note comments by LINA that the requirements of the Code exclude many public interest

news publishers and that it has not been the panacea for the news industry the Government had hoped for.

Indeed, it is having significant negative impacts upon media diversity and sustainability. Arguably the Code is having the unintended consequence of discouraging digital platforms from sharing news content. Rather than pay for news content, the digital platforms are deprioritising it and actively undermining the platforming of public interest journalism and news.

The latest Digital News Report: Journalism, Media, and Technology Trends and Predictions 2024 (<https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2024-01/Newman%20-%20Trends%20and%20Predictions%202024%20FINAL.pdf>) says evidence has been mounting over the last year of Facebook and other companies deprioritising news.

Almost two-thirds (63%) of the Reuters Institute survey respondents say they are worried about a sharp decline in referral traffic from social media sites. Data sourced from analytics provider Chartbeat shows that traffic to news sites from Facebook fell 48 percent in 2023, with traffic from X/Twitter declining by 27 percent, and Instagram by 10 percent.

If the Code is indeed discouraging digital platforms from sharing news, this is a problem for media sustainability, democracy, and for tackling the spread of misinformation and disinformation.

Furthermore, it could be argued that implementation of the Code has undermined media diversity, a critical concern that the Treasury review did not address in any substantive way, apart from noting: “While some stakeholders raised concerns about the Code’s impact on competition and media diversity, the objective of the Code is to address bargaining power imbalances so as to ensure news businesses receive fair remuneration from digital platforms for the value their content generates. It is not designed to redistribute resources across the news sector or to guarantee that all news businesses receive funding. Other policy and funding tools are available to achieve these objectives.”

We strongly recommend that an independent review of the Code be undertaken that centres its impact upon media diversity, and the supply of public interest journalism, especially to under-served communities and populations, and in relation to the spread of misinformation and disinformation.

## **2. The Government should NOT designate Meta or other digital platforms under the Code**

We strongly caution the Government against designating Meta or other digital platforms under the Code, given the likely impact upon communities’ access to news and the sustainability of independent media organisations. Small independent media organisations like Croakey Health Media rely upon digital platforms for disseminating our content, for engagement and for sourcing news. The digital operating environment is already extremely challenging.

Croakey Health Media, like other LINA members, has little to gain from the designation process and significant potential for loss.

We support LINA’s recommendation that if the ACCC does designate Meta or other digital platforms, the Government should provide funding to local and independent news publishers as compensation for its decision.

In the context of escalating mis and disinformation circulated via social media, the ACCC and Government should be wary of making any decisions that potentially limit communities' exposure to journalism produced under professional editorial standards.

### **3. The Government should pursue other policy options as a matter of urgency**

The Government could act immediately to help ensure the sustainability of many media organisations, by allocating a percentage of its advertising spend to independent media organisations, many of which did not receive any funding under the Code, and are facing financial difficulties now.

The Government should also prioritise access to DGR status for NFP public interest journalism organisations in the forthcoming budget.

Longer term, we urge the Government to convene an urgent summit to provide a more effective and equitable policy solution on the role of digital platforms in funding public interest journalism.

This summit should involve First Nations and wider civil society organisations, as well as public health experts and diverse media organisations to develop a more cohesive media policy framework. This should aim to answer the question: what policy measures will best address the rights of communities to have access to public interest journalism and a reliable, relevant and safe news ecosystem?

We note that during the development of the Code, many experts put forward alternative mechanisms. For example, Professor Allan Fels, suggested a digital tax as an alternative process.

## 2. Previous submissions

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 encouraged the Treasury 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. 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.

Below are summaries and links to some of our previous submissions:

### 2.1. Submission ACCC consultation: Mandatory bargaining code, 5 June, 2020

([https://www.croakey.org/wp-content/uploads/2020/07/ACCC\\_Consultation\\_submission\\_June5\\_2020.pdf](https://www.croakey.org/wp-content/uploads/2020/07/ACCC_Consultation_submission_June5_2020.pdf))

This submission put forward general principles to inform development of the code, including that it should:

- Prioritise the public interest
- Privilege public interest journalism
- Support innovation and non-profit and emerging models of public interest journalism
- Level the playing field, which currently privileges large media organisations, and governments or government agencies should ensure structural support is available to ensure equitable processes and outcomes.

### 2.2. Submission ACCC consultation Draft mandatory bargaining code, 28 August, 2020

([https://www.croakey.org/wp-content/uploads/2020/09/ACCC\\_CHM\\_submission\\_28Aug-2.pdf](https://www.croakey.org/wp-content/uploads/2020/09/ACCC_CHM_submission_28Aug-2.pdf))

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.

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”.

### 2.3. Submission to Review by The Treasury of News Media and Digital Platforms, Mandatory Bargaining Code (the Code) 13 May, 2022

([https://www.croakey.org/wp-content/uploads/2022/06/3.4-CHM\\_submission\\_13May2022.pdf](https://www.croakey.org/wp-content/uploads/2022/06/3.4-CHM_submission_13May2022.pdf))

Our submission raised concerns about the lack of transparency and accountability with the Code’s operations. We noted 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. We said: “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.”

We reiterate this call now.

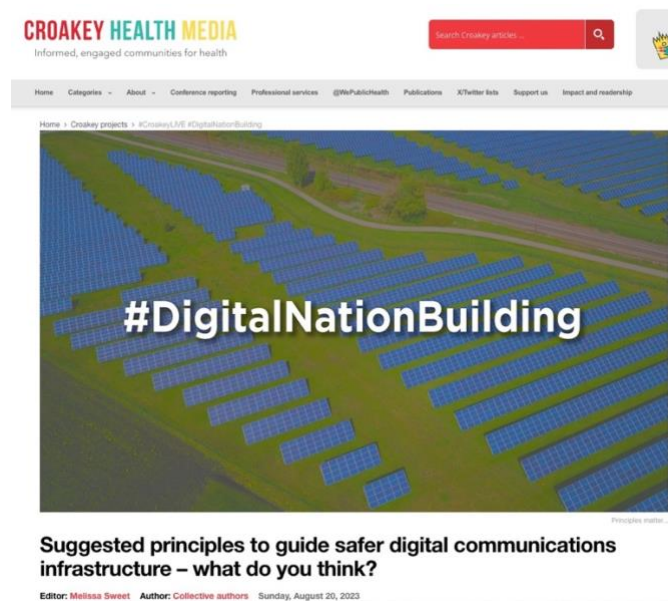


### 3. Editorial coverage

Croakey Health Media’s editorial coverage of digital platforms, public interest journalism and misinformation/disinformation has highlighted the importance of systematic reform, rather than ad hoc efforts that can have adverse, unintended outcomes.

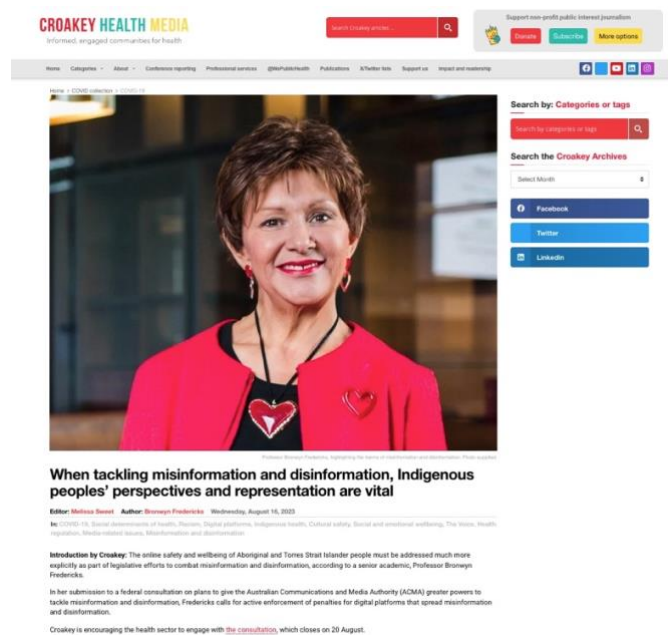
On digital nation building, see

<https://www.croakey.org/suggested-principles-to-guide-safer-digital-communications-infrastructure-what-do-you-think/>



On misinformation and disinformation, see our archives:

<https://www.croakey.org/category/media-and-health/misinformation-and-disinformation/>




On public interest journalism, see our archives:

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

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News deserts are a significant feature of the Australian media landscape. Photo by Jake Weirick on Unsplash. Image edited by Croakey.

## When tackling misinformation and disinformation, we also need to address the wider news and information landscape

Editor: **Melissa Sweet** Author: **Melissa Sweet** Wednesday, August 23, 2023

In: Commercial determinants of health, Cultural safety, Rural and remote health, Media-related issues, Misinformation and disinformation, Public interest journalism, News about Croakey

## 4. About Croakey Health Media

Croakey Health Media is widely recognised as an innovator and leader in the emerging not-for-profit public interest journalism sector in Australia ([Public Interest Journalism Initiative, 2021](#)). We are innovative in our organisational structure, blended funding model and development of the practice of social journalism ([Sweet et al, 2017](#)). We focus on health equity, and the social, cultural and environmental determinants of health, including climate change. The voices and expertise of Aboriginal and Torres Strait Islander people are foregrounded through our work, including through [our governance](#). Our board is chaired by leading Aboriginal scholars, Professor Bronwyn Fredericks (University of Queensland), and James Blackwell (ANU). Croakey Health Media Limited was registered on 24 August 2018 as a member-based company limited by guarantee, after evolving since 2007 as an independent journalism project. The ABN is 59 628 369 335 and the company is registered for GST.

Due to the lack of a clear pathway for public interest journalism organisations to establish as not-for-profit entities, Croakey Health Media is registered with the Australian Charities and Not-for-profits Commission (ACNC) as a charity under the subtypes of Advancing Health and Advancing Public Debate. We have not been able to obtain DGR status, reflecting the lack of a transparent, equitable pathway for NFP public interest journalism organisations to do this. We have made a number of unsuccessful applications for DGR status, and have recently lodged another application. Not having DGR status has been an obstacle to our capacity to raise funds and to our efforts to become more sustainable.

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 include leading health organisations. We have firm policies on editorial independence and these are communicated to funders.

As an organisation, one of our five strategic priorities is to create a sustainable environment for public interest journalism, acknowledging the vision outlined in [our strategic plan](#), that "a vigorous and sustainable public interest journalism sector contributes to the health and wellbeing of people, families, communities, policies, societies and the environment".

We advocate for policy reform to support a sustainable public interest journalism sector, through making [submissions](#), 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 to support public interest journalism. Croakey Health Media is a member of the Local and Independent News Association (LINA). Our members belong to various professional organisations, including the Media, Entertainment and Arts Alliance.

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 public interest journalism as a determinant of health](#).

See Croakey Health Media's [previous submissions](#) to inquiries on media policy and related (2017-2024).