



News Media and Digital Platforms Mandatory Bargaining Code Review  
Market Conduct Division, The Treasury  
Langton Crescent  
PARKES ACT 2600

Friday May 6, 2022

Dear Secretariat

Thankyou for the opportunity to make a submission to the review of the News Media and Digital Platforms Mandatory Bargaining Code.

Please find below a submission on behalf of The Conversation Media Group.

Yours sincerely,



Lisa Watts  
CEO, The Conversation Media Group

## **About The Conversation**

The Conversation is a global not-for-profit journalism project that pairs professional editors with academics to publish articles that share new research and explain issues in the news. All its content is free to reproduce and republish, with the aim of sharing trusted information with the widest possible audience.

The Conversation's Australian team of 40 plus professional journalists publishes approximately 400 articles a month from leading researchers and academics who are sharing their expertise with the Australian public, correcting misinformation or falsehoods and delivering news, research and commentary on current events.

A unique Australian start-up, The Conversation is having a global impact by providing trusted information that is clearly marked, academically rigorous, and easily distinguished from fake news.

The monthly audience to The Conversation Australia is 7 million unique users onsite, and 23 million through republication. Our readers are an even split between male (47%) and female (53%). The age of readers skews young, with 61% of readers under 44 years old. (source: google analytics)

The Conversation has strict editorial standards around fact checking. Editors and authors are bound by [global editorial policies](#) and a [charter](#). Authors complete a disclosure of funding and relevant interests.

## **The Conversation and The News Media Bargaining Code**

The Conversation is a strong advocate of the importance of quality journalism in serving democracy and empowering citizens to make good decisions in their lives. As such, The Conversation was an active participant in the Australian Competition and Consumer Commission consultation process that led to the development of the News Media Bargaining Code. We have previously advocated strongly in favour of a policy framework that supports a diverse ecosystem of quality public interest journalism in Australia.

## **The Conversation and the definition of Public Interest Journalism**

In a previous [submission](#) to the Select Committee on the Future of Public Interest Journalism The Conversation proposed a clear definition of public interest

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journalism. We suggested then, as we do now, that In the digital age, social media supports dissemination of content without any regard to its accuracy.

This means that the task of muddying the waters on matters of great public importance is simpler and cheaper than ever before. There is a deluge of information, but it is increasingly difficult for audiences to know what to trust.

This is why preserving and protecting the role of public interest journalism is vital. And to achieve this we need to define public interest journalism in a way that reflects what public interest journalism really is: the independent dissemination of trustworthy information that has been filtered and assessed by journalism professionals.

Any working definition of public interest journalism should reflect:

- A systemic publishing activity in institutional framework in which public good or serving the public is a stated priority.
- An organisation that is committed to factual accuracy, backed up by documented processes to ensure truth, accuracy, fact checking and reliability.
- A code of ethics and public commitment to accuracy.
- Systems of accountability and accreditation for contributors and journalists.
- Policies and procedures around correction of misinformation.
- Systems to ensure transparency of any conflicts of interest or vested interests.
- Systems for audience feedback.

The Conversation is one example of this type of journalism: a not-for-profit project that shares academic expertise to inform the public, rebuild trust in experts and provide free and reliable information.

The Conversation's participation in the consultation process that led to the development of the News Media Bargaining Code was based around ensuring that media diversity would be enhanced.

Throughout the process we were assured by Chairman Rod Sims and the ACCC team The Conversation would be covered by the NMBC and it was drafted with this in mind.

## **The Conversation and the News Media Bargaining Code**

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Once the News Media Bargaining Code came into effect on 3 March 2021 The Conversation approached Google and Facebook to negotiate a deal. We had been in discussions with representatives from both companies through the period during which the NMBC was being developed.

Google engaged in bargaining with The Conversation in good faith and agreed to fund The Conversation under the Code. Without providing a reason, Facebook declined to negotiate with The Conversation and SBS, as well as many other quality media companies otherwise eligible under the Code.

Facebook claimed that despite its refusal to negotiate with The Conversation we could join other publishers in applying for specific funding grants on an ad hoc basis.

This is not what we understood to be the intent of the code. It does not provide the certainty of revenue and independence necessary to support bona fide public interest journalism.

## **Flaws in the News Media Bargaining Code**

The Conversation remains supportive of the News Media Bargaining Code as a law that supports the vital work of media organisations producing public interest journalism. However there are clear flaws that have emerged from its first year of operation.

- 1) Access to the system of final offer arbitration provided for by the NMBC requires designation of Facebook and/or Google. This is a big step for the Treasurer to take and ultimately may become a political calculation. We submit that Facebook should be designated in light of its failure to negotiate in good faith with The Conversation and SBS and many other smaller publishers. We understand there may be a reticence to take on this issue given Facebook's previous conduct in removing news from its platform in an effort to bully the Australian Government into providing more favourable terms.
- 2) There is an asymmetry of information that makes it very hard for small and medium-sized publishers to understand the market in which they are operating and negotiate a fair deal with the digital platforms. This may improve over time as the NMBC continues to operate but it will require a relaxation of the confidentiality rules.

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- 3) A lack of transparency around the deals make it very hard for researchers to assess the public policy effectiveness of the NMBC. We do not have reliable information on the amounts paid and it is not possible to track whether the revenue received by media companies has supported public interest journalism.

## **Next steps for the NMBC and The Conversation**

The effectiveness of the operation of the NMBC once a digital platform has been designated remains unknown. We submit that Facebook's failure to negotiate with The Conversation, SBS and several other publishers provides an ideal opportunity to test the operation of the NMBC with a designated platform.

The Conversation should not be treated differently to other media outlets that have received payments from Facebook for their content under the Code. The different treatment creates an unfair and unequal news marketplace. It works against media diversity by placing The Conversation at a competitive disadvantage.

The only way for the policy aims of this legislation to succeed is to have the Treasurer designate Facebook under the media bargaining code.

It is possible that in response Facebook will threaten to remove news from its pages – again. We should not fear this. The Australian Government has already shown it will not give in to bullying. The removal of all news from Facebook could be a positive for Australians who are currently relying on this platform that is dangerously full of misinformation.

Sincerely,

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