

Meta's response to the Treasury Department's review of the news media bargaining law

MAY 2022

Executive summary

Meta welcomes the opportunity to input to the Australian Treasury Department's 12 month review of the news media bargaining law.

Since the law was passed, Meta has made a significant contribution to the sustainability of the Australian news ecosystem. We have continued to provide the suite of free services and paid tools that deliver value for news publishers. In addition to the commercial investments that we have brought to Australia since 2019, Facebook's Feed sent Australian news publishers more than 3.5 billion clicks in the last 12 months. Publishers are free to monetise this traffic however they wish. This referral traffic is provided at no cost to news publishers. We estimate the value of these organic referrals to be approximately US\$340 million per year.¹

We have also launched two journalism funds to support innovation, public interest journalism and smaller publishers who would not be suitable for commercial agreements. We have delivered a three-year innovation fund with Country Press Australia to support regional news. So far, 106 regional mastheads across Australia have been announced as recipients of funding. And our three-year partnership with the Walkley Foundation to fund regional newsrooms, digital-first publications and public interest journalism projects has this year provided funding to 54 publishers from around the country.

And we have launched a new, innovative product called Facebook News, which is designed to showcase high-quality content and journalism.

We have entered into commercial agreements with a wide range of news publishers. Combined with all of the benefits we make available for Australian news publishers, Meta's contribution to the Australian news ecosystem represents hundreds of millions of dollars - a significant investment by any measure.

This is in addition to the ongoing support provided to publishers by our news partnerships team, which consults on a wide range of issues and opportunities, including audience analysis, product onboarding and best practices for using Meta's publishing tools and features.

¹ News publishers as defined by the list provided by the ACCC in September 2020. These figures may fluctuate based on news cycles. Value calculated on the basis of average cost-per-click auction pricing for Australia news publishers' link clicks on our platform. This covers the last 12 months ending March 2022.

Since its passage, the law has been globally touted by publishers as a successful model to support public interest journalism. It is better described as an untidy and short-term compromise that we have nonetheless tried to work with in good faith. While we were already planning to invest in Australian news prior to the legislation passing, the law distorted our approach to investment. As a result of the backdrop of the legislation, our overall investment package has over-indexed towards larger publishers and has been diverted away from investing in more innovative projects and towards business-as-usual activities by publishers that provide virtually zero commercial value for Meta. It has been very challenging to operate within this framework over the last 12 months.

Consequently, as long as the law stands and any digital platform can face designation, it will deter platforms from making news available on their services or attempting to work with publishers to solve their business model challenges.

In this way, the law does not solve the longstanding digital transformation challenges facing the news industry. It actually undermines - not supports - its purported public policy goals of supporting the long-term viability of journalism in Australia.

Meanwhile, over the last 12 months, the digital industry has changed significantly, and consumers' preferences are fundamentally shifting towards short-form video and creator content. The law disincentivises news publishers (as well as the digital platforms who are paying them) from responding to these trends.

Given there has been significant global attention on the law in Australia, we provide comments to this review to contribute to the local and global public policy debate about the consequences of its application and to be transparent about the business decisions Meta will face in future. Our experience of the law over the last 12 months has highlighted four concerns:

1. The law deters investment and innovation by requiring investment from digital platforms for non-commercial activities.

The threat of designation distorts investment in ways that do not reflect commercial realities or changing market dynamics. It incentivises an over-indexing towards large news publishers (often with political influence) which comes at the expense of smaller and potentially more innovative news publishers, including publishers that may become competitors to these larger players.

One of the primary challenges has been that the law has set expectations that Meta's investments will have no grounding in commercial reality. The law is structured to jump straight to price regulation (via final offer arbitration), without any proper consideration of whether or not a news publisher should be entitled to any commercial agreement in the first place. Instead of being guided by what our users want to see on our services, we are required to include content from publishers that may not match consumer demand.

As a result, we have faced concerted lobbying from news publishers who have no regard for the economic reality that commercial agreements need to be able to generate a return for *both* parties. The legislation has misled them into thinking they are entitled to payment simply for using our free services to expand their own audience. It is a near-impossible task to make commercially sound and innovative investments in news that could potentially bring a high enough return to trigger more investment in future - while balancing impossible expectations from news publishers.

It's clear that, although we have made significant investments in the Australia news ecosystem over many years, no amount of investment will be enough for publishers whose demands will inevitably grow, given this law emboldens them to make claims that are not tied to a commercial reality that value needs to flow both ways.

2. The revenue received under commercial agreements has not solved the business model challenges of journalism.

It would be inaccurate to claim that this legislation has solved the challenges facing journalism and created a permanent revenue stream for news publishers. It encourages complacency among news publishers that existing flawed business models present a sustainable future for journalism.

While there are some elements of our overall package of investment in Australia that we believe could encourage innovation, the overall package did not invest in innovation to the extent we had planned, independent of the law. Some of the revenue publishers have received from our commercial agreements is being used to pay down debt, or issue distributions to shareholders. Indeed, some companies have even cut journalism jobs after striking agreements after the legislation was passed.

Of course, the expenditure of revenue gained under these agreements is at the discretion of news publishers and there is no requirement to use it in ways that reflect the public good. However, the legislation will only be a short-term band-aid if it does not address the fundamental industry-wide shifts that placed media companies under pressure in the first place. It is a major flaw in the law that there is no oversight or expectations placed on news publishers to ensure that the ultimate public policy goals are addressed and not used as an excuse for profiteering.

3. The law is inequitable and does not account for a rapidly-changing digital industry.

One of the fundamental flaws is the law's structure that enables entirely arbitrary decisions about which companies are candidates for designation. We have concerns about expectations that two companies - Meta and Google - are expected to be responsible for the sustainability of the Australian news industry.

The flaws in the ACCC's analysis that underpinned the law have become even more concerted in the last 12 months. For example, since the legislation was passed, the role that Facebook plays in providing news has continued to shrink. The percentage of Australians using Facebook for news has dropped sharply from 45 per cent to 33 per cent since 2016.² Other competitors have also grown significantly: for example, in the same time period, the percentage of Australians using YouTube for news has increased from 15 per cent to 20 per cent³, and statistics from 2021 demonstrate that Australians now spend much more time on TikTok (23.4 hours a month) than Facebook (17.6 hours a month) or Instagram (8.3 hours a month).⁴

Dedicated news products offered by companies larger than Meta, such as Apple and Microsoft, remain unexamined in terms of their significance to the news industry - without any rationale.

Similarly, the demands of consumers from digital platforms continue to evolve. Even since the legislation was passed, there is much stronger demand for different content formats, including short-form video and content created by individuals, and less demand for news content in the form of traditional articles.

² S Park et al., *Digital News Report: Australia 2021*, 23 June 2021, https://apo.org.au/sites/default/files/resource-files/2021-06/apo-nid312650_0.pdf.

³ *ibid.*

⁴ *State of Mobile 2022*, 12 January 2022, report by data.ai, available: <https://www.data.ai/en/go/state-of-mobile-2022/>.

As the ways people discover news and information on Facebook change, publishers should be prepared. For example, if a publisher mostly uses Facebook to promote links to news articles, we expect referrals to decrease over time based on what users are engaging with today [video] as compared to a few years ago. Watching video is half of time spent on Facebook and Instagram, and Reels is our fastest growing content format by far.⁵

As with any company, Meta needs to adapt to changing consumer preferences and there is no guarantee that products featuring traditional news content will satisfy consumers in the long run.

Digital markets change rapidly but there is no formal mechanism under the legislation to consider this change, to independently assess the current state of digital markets, and to be clear on which companies are possible candidates for designation (and why). This discriminates against two US companies and puts them at a significant disadvantage to our competitors, including companies that come from other countries like China that propagate very different visions for the internet, and take a very different approach to content and storytelling formats. Aside from distorting competition in digital markets, it also results in greater uncertainty for news publishers about which companies they can expect to make contributions to the Australian news ecosystem.

4. The law is so punitive it could never work in practice, if a platform was designated.

We understand that the threat of regulation can at times constrain or modify market behaviour in ways that are in the public interest, without needing to resort to enforcement of that regulation. However, if it ever came to pass that a company was designated, the regulatory regime is so disproportionate that it is hard to see how any digital platform could operate under such a scheme.

Our previously-raised concerns about excessively punitive aspects of the legislation remain. This includes the inability for platforms to choose what content is on their platform, mandatory payments being decided by the highly unusual 'final offer arbitration' model, penalties exponentially larger than most other industry codes under competition law, the lack of appeal mechanisms, and a non-differentiation clause that makes it hard to see that existing solutions (like Facebook News) could work in the longer term.

⁵ Meta, 'Launching Facebook Reels globally', *Meta Newsroom*, 22 February 2022, <https://about.fb.com/news/2022/02/launching-facebook-reels-globally/>.

However, the most concerning aspect of the legislation that has been illuminated over the last 12 months is the broad and ambiguous nature of the provisions that set the criteria for the new businesses that can register for payment under the law. When the legislation was passed, it was unclear what type of publishers could qualify under the legislation but we cautioned the number of organisations who could qualify would be well over 200. We also cautioned that the vague definition and low threshold could encourage ‘fly by night’ publishers who are created solely to take advantage of the legislative regime. We also warned that publishers would structure themselves in ways to artificially exaggerate the number of ‘news sources’ they provide. This exact outcome has come to pass, with the publishers who have successfully registered with the Australian Communications and Media Authority, including one publisher who publishes no news and whose journalists appear to both be fake profiles.⁶

The sheer number of potential organisations that could exploit the vague definition of “news source” would represent a commercially unsustainable regulatory burden for any company who may find themselves to be designated.

Meta has long been constructive in supporting and contributing to debates about proportionate regulatory frameworks that could provide transparency and accountability for our dealings with news organisations, while reflecting the commercial realities of the relationship. We remain ready to discuss the policy challenges that arise from the news media bargaining law with the Australian Government.

⁶ B Kaye, ‘Exclusive: Australia puts site accused of fake journalists on register for payment’, *Reuters*, 24 December 2021, <https://www.reuters.com/world/asia-pacific/exclusive-australia-puts-website-accused-fake-journalists-register-payment-by-2021-12-23/>.

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Meta's benefits for the Australian news ecosystem

Facebook is primarily a service used by Australians to connect people with each other, to participate in causes that are important to them, and to interact with their community. Our services can play a role in supporting news discovery, only to the extent that publishers choose to make their content shareable on our services. This is because publishers choose to share news links on our services to connect with audiences (the overwhelming way in which news content appears on our services), and because Australian users choose to share news content on the platform. Publishers control whether and how they share news on our services and they also control whether members of the public are able to share news links on Facebook.

Only a very small proportion of the content on Facebook is news or links to news off our platform. News continues to be a negligible source of commercial value for us.

Since the conclusion of the Digital Platforms Inquiry in 2019, we saw an opportunity at that point in time to invest in the Australian news ecosystem.

In addition to the existing investments and programs we provide to the news sector, we planned investment around the product Facebook News, a dedicated destination for news within the Facebook app. Digital platforms' innovation in news-related products have the potential to assist with shoring up the sustainability of the news industry; but we recognise that it is reasonable for us to enter into commercial deals if we are asking news publishers to participate in a new innovation that goes beyond the publishers' choice to share news links in their ordinary course.

The Government has said that the review of the law will not consider whether specific companies like Meta should be designated under the legislation. However, given the public debate around this law continues to misconstrue and underestimate the benefits we bring to the news industry, we outline below the steps we have taken to date in order to support news publishers.

Benefits we provide publishers

Facebook is a voluntary service. News appears on Facebook either because publishers post it directly themselves (or posts a link to it) or because they allow people to share it or link to it. Publishers exert control over which news they make available on Facebook, and how they choose to monetise the associated content when Facebook directs traffic back to their website or via the monetisation products that we have built into our

services for publishers. They receive this value from Facebook for free. This is different to services such as search engines.

Publishers receive direct benefits from referral traffic (which they can monetise and capture new audiences), indirect benefits such as brand awareness and community building, and revenue from products we have built in collaboration with the news industry.

- While referral traffic totals from Facebook to news publishers vary with the news cycle, Facebook’s Feed generated approximately 3.5 billion organic referrals to Australian news publisher domains over the last 12 months (March 2021 to March 2022). Publishers are free to monetise this traffic however they wish. This referral traffic is provided at no cost to news publishers. We estimate the value of these organic referrals to be approximately US\$340 million.⁷
- Most referral traffic comes from links that news publishers post themselves and have complete control over. In the last 90 days, for example, more than 85 per cent of organic views on article links from Australian news publishers were from links the publishers had posted themselves (rather than users).⁸

In addition to free distribution and monetisation opportunities, we also provide more than a dozen different tools which can be used by news publishers to gather data and insights on the performance of their posts and advertising campaigns – and support their operations. This allows publishers to further refine their publishing strategy to drive greater commercialisation opportunities.

Through these efforts, we have incorporated publisher feedback into the development processes for:

1. **Subscriptions:** Facebook has been collaborating with publishers on building tools to help attract and retain subscribers for the past five years. In 2017, we launched a native paywall tool that prominently showed the publisher logo, subscription benefits and prices when readers hit the limit of free articles. 100% of paywall revenue goes to the publisher and publishers fully own the relationship and control the data of their subscribers who’ve signed up through Facebook. As

⁷ News publishers as defined by list provided by the ACCC in September 2020. These figures may fluctuate based on news cycles. Value calculated on the basis of average cost-per-click auction pricing for Australia news publishers’ link clicks on our platform.

⁸ News publishers as defined by list provided by the ACCC in September 2020. This covers the last 90 days ending April 2, 2022.

news publishers have increasingly focused on paid reader retention (reducing subscriber churn), we have developed Facebook’s Account Linking product that enables publishers to match, and link, their subscribers to Facebook users. The benefits of Account Linking include reduced friction – as readers no longer encounter paywalls or login pages as they leave Facebook and arrive at the publisher website – and increased engagement and distribution, including more Facebook Page followers. Through our Meta Journalism Project Accelerator program⁹, we’ve also worked with publishers to develop actionable off-platform strategies to acquire and retain subscribers. Participating publishers include Australian Community Media, The Conversation, News Corp, Seven West Media and Private Media.

2. **In-Stream Ads:** Publishers can sign up for the insertion of In-Stream Ads (formerly known as ad breaks) into their video content and receive a majority share of the ad revenue generated. In the past year, we have launched new video ad products in Australia to support short-form video and live video monetisation for publishers. Meta has provided more than USD\$9.1 million of in-stream ads revenue to Australia news publishers in the last 12 months (ending March 2022).
3. **Instant Articles:** Publishers can distribute articles on the Facebook platform via our “Instant Articles” product, which allows various types of ads to be included in the articles. These include (i) ads sold directly by the publishers’ sales team for which the publisher keeps 100% of total ad revenue, and (ii) use of Facebook’s Audience Network product to monetise any impressions that are not directly sold by the publisher. Meta has provided more than USD\$10.5 million of Instant Articles revenue to Australian news publishers in the last 12 months (ending March 2022).
4. **Branded content:** Publishers can partner with advertisers to create and post branded content on their Facebook pages. Advertisers directly pay publishers for such content and publishers retain 100% of revenue generated. While the partnerships are between advertisers and publishers, Facebook’s tools help publishers connect with interested advertisers.

⁹ A Hunter and D Grant, ‘Facebook Accelerator helps publishers in Australia and New Zealand generate reader revenue’, *Meta Journalism Project blog*, 19 January 2021, <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-2020>.

Investments in innovative products

Meta has entered into commercial agreements with news publishers in recent years to support the launch of new innovative products. Two examples are given below.

In August 2018, Meta launched Facebook Watch in Australia. We directly invested in high-quality news video, striking agreements with publishers and broadcasters to incentivise the publication of longer-form video content onto the platform. These agreements were in the form of minimum guarantees against ad revenue for clips content and original, exclusive news videos.

Since its launch, this product has been supported by **13** commercial agreements with news broadcasters to create content to ensure Watch is an engaging product for Australians. To date, none of our news video deals are on track to break even (ie. to deliver enough revenue to cover the minimum guarantee Meta has paid to the news businesses).

In August 2021, we launched Facebook News. Facebook News is a dedicated tab on Facebook that spotlights news stories from a diverse range of reliable and relevant news sources. Facebook News gives people a dedicated space to seek out stories that matter the most to them, while ensuring original news reporting is given a wider reach to audiences across the country.

This was supported by **13** commercial agreements with news publishers selected on the basis of objective criteria. This is a significant contribution to the sustainability of the Australian news ecosystem that, along with the other support we provide to Australian publishers, collectively represents hundreds of millions of dollars in investment by Meta.

There are many publishers for which commercial deals are not viable. In considering its set of potential commercial deals for video content in Facebook Watch and article content – including those behind paywalls – in Facebook News, Meta needed to make choices based on the suitability of the content (product-market fit). The budget to support content agreements for these products was limited and it was therefore inevitable that some news businesses would not receive a deal. For those publishers unlikely to be able to meet performance criteria for commercial deals, we set up the Facebook Australian News Fund, to enable an arms-length distribution based on clear criteria. Publishers that did not have commercial deals were eligible to apply for this funding.

Reporting of the news media bargaining code laws has highlighted two publishers that have not received deals: SBS and The Conversation. Meta has worked closely with SBS and The Conversation for several years on a number of projects. In addition to the various support functions that our News Partnerships team provides both organisations, Meta has also collaborated on special projects with – and provided direct funding to – both publishers.

In 2018, Facebook did a commercial licensing deal for SBS news video in Facebook Watch. As with all our video deals, this was structured as a minimum guarantee against future revenue share on advertising sold by Facebook. Based on its performance, Meta decided not to pursue a further deal.

Both SBS and The Conversation were eligible for the Facebook Australian News Fund, but we understand that neither chose to apply for it. That is their choice. We are disappointed, however, we remain open to their participation in our funds, and to potential further investment by Facebook in SBS and The Conversation in future.

In 2019, we invited The Conversation to take part in the ANZ Reader Revenue Accelerator, a local version of our global platform-agnostic program focusing on boosting subscriptions, memberships and donations.¹⁰ In the first program of its type in Australia, Meta provided one-on-one world-class expert coaching and project funding to eight Australian publishers. This project funding was topped up with a substantial COVID-19 relief payment in mid-2020 and a further alumni grant in August 2021.¹¹ Through this ongoing collaboration, The Conversation has driven a material increase in newsletter sign-ups and paying readers, contributing to the ongoing sustainability of its news operations.

Products such as Facebook Watch and Facebook News are investments in innovation. It is incumbent on innovative companies to adapt. And, over time, if these products are not able to reach product-market fit (ie. to attract the interest of enough consumers, or to generate a return on the investment), then Meta's investment in that particular product may not continue.

¹⁰ A Hunter and D Grant, 'Facebook Accelerator helps publishers in Australia and New Zealand generate reader revenue', *Meta Journalism Project blog*, 19 January 2021, <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-2020>.

¹¹ Meta, '32 organizations receive Accelerator alumni grants totaling \$700,000', *Meta Journalism Project blog*, 3 August 2021, <https://www.facebook.com/journalismproject/programs/accelerator/accelerator-alumni-grants-2021>.

Grant funding for public interest news

We have established two multi-million dollar innovation funds to support smaller and regional news publishers. These funds are structured so that we partner with an organisation that will independently assess and distribute grants to publishers who meet the criteria of these funds.

Bespoke commercial arrangements are not suitable for every news publisher. The administrative and legal complexity of commercial arrangements – and the production requirements such as content volumes and delivery – may be too great for smaller publishers. Additionally, not all news content provides enough value to the users of products such as Facebook News and Watch to deliver a sufficient return on investment for Meta. Grant fund structures allow Meta to make a contribution to news organisations without any expectation that we will make a commercial return (as opposed to commercial agreements). In this way, we are experimenting with a way to support smaller, regional and diverse publishers.

Specifically, there are two funds:

- The Facebook Australian News Fund, represents \$15 million across three years and is administered by The Walkley Foundation. It comprises two separate funding allocations:
 - a. The Newsroom Sustainability Fund will distribute AU\$2.5 million per year across three years, in grants of up to AU\$250,000 to fund regional newsrooms and publications serving diverse audiences. Funding will go towards innovation and revenue-generating projects, such as subscription paywalls and membership program development.
 - b. The Public Interest Journalism Fund will also allocate AU\$2.5 million per year over three years, providing grants of up to AU\$120,000, to small, regional publishers and independent journalists to fund news projects of public interest value and to encourage media diversity. We are particularly focused on how the fund could provide support for underserved communities – such as Indigenous Australians, LGBTQI+ community, youth and women’s issues, rural affairs and local civic journalism.¹² The Public Interest Journalism Initiative (PIJI) provided input into the development of this fund.

¹² A Hunter, ‘Facebook announces AU\$15 million news fund and begins the phased launch of Facebook News in Australia’, *Meta Australia blog*, 4 August 2021, <https://australia.fb.com/post/facebook-au15-million-news-fund/>.

We announced in April 2022 that 54 publishers had been successful in receiving funding via the first round of funds. There were a broad range of recipients, from local newspapers around the country, to Indigenous media outlets, to publications for Jewish and multicultural communities, to Australian Associated Press.¹³

- A Newsroom Sustainability and Digital Transformation Fund with Country Press Australia is a three-year innovation fund to support regional newsroom sustainability and digital transformation. Country Press Australia distributes the funds annually to its members as grants based on applications by those members. In April 2021, Meta and Country Press Australia announced the first round of recipients. 106 regional mastheads across Australia will receive a share of the fund.¹⁴

Case studies: The Facebook Australian News Fund¹⁵

The Facebook Australian News Fund, administered by The Walkley Foundation, is supporting a number of promising projects.

With the funding from Meta, Australian Associated Press will focus on helping to bring news back to local communities. The funding will facilitate three week-long news-gathering missions to remote locations. Each mission will see an AAP journalist and photographer travel to remote communities in the Northern Territory (Torres Strait), far north Queensland (Cape York and the Gulf) and Western Australia (The Kimberley region) to produce a collection of local stories.

Using Meta's funding, the National Indigenous Times (NIT) will establish Australia's first Indigenous image library. This digital image repository will offer a single destination for publishers to source culturally-appropriate images of Indigenous Australians produced by Aboriginal and Torres Strait Islander peoples.

Applying their grant from Meta, the team at Australian Jewish News has undertaken the task of digitising its historic back catalogue, which includes 6,200 editions.

Case studies: Newsroom Sustainability and Digital Transformation Fund¹⁶

The Colac Herald, which has been in operation for 155 years in Victoria, wants to ensure it continues to digitally transform its business – and use modern methods of news gathering to serve its local community. To do this, the newsroom is using Meta's funding to invest in new

¹³ The Walkley Foundation, 'Facebook Australian News Fund', *The Walkley Foundation*, <https://www.walkleys.com/valuing-journalism/facebook-australian-news-fund/>.

¹⁴ Country Press Australia, *106 regional publishers awarded Country Press Australia Sustainability and Digital Transformation Fund*, 11 April 2022, <https://www.facebook.com/countrypressaustalia/posts/5338537562857485>

¹⁵ More case studies are available at: <https://www.facebook.com/journalismproject/sustainable-newsroom-innovations-Facebook-Australian-News-Fund>

¹⁶ More case studies are available at: <https://www.facebook.com/journalismproject/country-press-australia-regional-newsroom-sustainability-and-digital-transformation-fund>

camera equipment, digital training for staff and upgrading its existing paywall and digital flip book, aiming to widen its digital audience.

The North Central Herald, which serves the Victoria community of Kilmore, required Meta's funding to bolster the publication's digital presence, which the company believes is central to their future success, delivering an increase in readership and advertising revenue. The publication's digital transformation is at the very inception, with Meta's grant funding the modernising of basic IT equipment, purchasing a new server, 10 PCs and new production software. and hiring a digital leadership role.

Other investments

There are a range of other tailored ways that Meta has supported the Australian news ecosystem to date.

We recognise that all publishers have different business strategies, monetisation models and level of digital skills. For smaller and medium publishers (especially regional and local publishers), we work through Accelerator programs to support them with training, expert coaching and funding to address specific business challenges.

In 2019, we convened our first ANZ Local News Accelerator. We invested AU\$2.5 million to bring 11 regional and smaller publishers together with industry experts from around the globe to help them develop strategies encouraging revenue growth, including encouraging readers to subscribe and donate. As part of this investment we provided funding of AU\$100,000 to participating publishers to support reader revenue projects.

This program generated more than AUS\$7 million lifetime customer value for the participating newsrooms.¹⁷

In addition, all participating Accelerator publishers were paid an unencumbered top-up fee of \$80,000 as part of the COVID-19 relief fund in mid 2020. In early 2021, some participants were also paid more than AU\$30,000 in Accelerator alumni grants to support their ongoing reader revenue projects.

In 2020, through our Facebook Journalism Project COVID-19 Australian News Relief Fund Program administered by the Walkley Foundation, we awarded funds ranging from from \$10,000-\$60,000 USD to eligible news organisations in Australia to help support

¹⁷ For more details, please see: <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-reader-revenue>.

them in producing original news content related to COVID-19, or offsetting revenue shortfalls to help publishers maintain long-term sustainability.

This included funding for 17 rural and regional news organisations in Australia as part of a global \$100 million investment to support the news industry through the pandemic.

Mastheads such as the Central Coast Community News, Geelong Independent, Noosa Today, and Naracoorte News all received grants to help contribute to their viability through the first year of COVID-19.¹⁸

A Walkley Foundation judging team selected projects based on organisational need, public interest and impact. Many of the winning submissions included long-term opportunities for increasing the reach and distribution of regional journalism and new ways to grow advertising and subscriber revenue. As the coronavirus had a major impact on many of the rural and local commercial enterprises that paid for news by advertising, it was important that Meta's funds went directly to alleviate those losses and contribute to the sustainability of some of the newsrooms across Australia that needed it most.

¹⁸ The Walkley Foundation, '17 newsrooms in regional Australia secure financial support from the Facebook for Journalism Project COVID-19 News Relief Fund Program', *Walkley Foundation*, <https://www.walkleys.com/facebook-fund-recipients-announced/>, 15 July 2020.

Reflections on the news media bargaining law

Meta's concerns about the news media bargaining law have not changed. We consistently said before the law passed that it fundamentally mischaracterised the dynamics between news publishers and Facebook.

We were so concerned that we did not believe it was commercially feasible to continue allowing news content on our services in Australia, if the law would apply to us. With great reluctance, we took steps to no longer allow Facebook to be used to share news in Australia.

We were only able to restore news after the Australian Government agreed to a number of guarantees and changes to the legislation.¹⁹ It did not resolve the fundamental issues with the law, but it allowed news publishers to continue receiving the benefits of Facebook's services and resolved the disruption to Australian users. It also afforded Meta the opportunity to demonstrate that our plans to invest in Australian news were genuine.

Over the last 12 months, Meta has delivered on the news investment and product launches that we had planned for Australian news.

However, the concerns we raised prior to the legislation taking effect have borne out as expected. The legislation sets a framework that is not conducive for digital platforms such as Meta to bring investment to news in Australia in the long term. Rather, the legislation has led to an untidy, short-term and unsustainable compromise that did not resolve the fundamental issues with the law that numerous experts raised before it was passed.

Unless the fundamental issues with the law are amended, it will be challenging for Meta to continue investing in the Australian news ecosystem after the existing three-year investments in Facebook News, Watch and public interest journalism conclude. In this way, the law undermines its purported public policy goals of supporting journalism.

Our comments below are based on our experience during the past 12 months. While Meta has not been designated, the mere existence of a law is enough to change market behaviour. These comments are also informed by our discussions with many

¹⁹ Recent reporting has falsely alleged Meta over-extended the Pages removed from our services on purpose. The documents cited in the reporting clearly show that we intended to exempt Australian Government and civic Pages from these restrictions in an effort to minimise the impact of this misguided and harmful legislation. When we were unable to do so as intended due to a technical error, we apologised and worked to correct it. Any suggestion to the contrary is categorically and obviously false.

governments around the world which have been activated by the passage of the Australian law.

We believe the following **four** concerns need to be addressed, if Australian policymakers want to encourage investment in Australian news over the long term.

1. The law deters investment and innovation

Much of the public discussion around the law has focussed on whether individual publishers have “got a deal” related to Google or Facebook. The law is seen to have worked if specific publishers have a commercial agreement in place.

It would be a mistake for Treasury to use the same test to form a view on whether or not the law is working.

As we are seeing in our own business, there is a tremendous amount of competition for people's attention. Today we see people consuming more content and increasingly spending more time with short form video formats. The legislation does not account for changing trends.

While we were already planning to invest in Australian news prior to the legislation passing, the law distorted our approach to investment. As a result of the backdrop of the legislation, for example, it incentivises an over-indexing to large news publishers with political influence and payments far greater than the actual commercial value derived from that relationship. This comes at the expense of smaller and potentially more innovative news publishers. As another example, the threat of designation has influenced the content of our commercial agreements away from the more innovative projects which could actually generate revenue for both parties and help the news industry adapt in the long term. The law assumes payment for business-as-usual activities by publishers that provide virtually zero commercial value for Meta.

Even though it has extended Meta's investments into areas that we otherwise would not have considered to be commercially sound, the law has set expectations that Meta's investments will have absolutely no grounding in commercial reality. The law is structured to jump straight to price regulation (via final offer arbitration), without any proper consideration of whether or not a news publisher should be entitled to any commercial agreement in the first place.

As a result, we have faced concerted lobbying from news publishers who have no regard for the economic reality that commercial agreements need to be able to generate a return for *both* parties. These publishers have expected to receive payment from Meta even if they provide no commercial value to Meta; in some cases, even if they do not even use our services at all. The legislation has misled them into thinking they are entitled to payment simply for using our free services to their own benefit.

It has been very challenging to operate within this framework over the last 12 months. It is a near-impossible task to make commercially sound and innovative investments in news that could potentially bring a high enough return to trigger more investment in future - while balancing impossible expectations from news publishers.

We also contest the view put forward by some that Meta's contribution to the sustainability of the Australian news industry can only be assessed when it's in the form of commercial agreements. As outlined earlier, we provide significant value to the news industry via a wide array of mechanisms, including public interest journalism funds. A specific publisher may not be in a commercial agreement with us but can still already significantly benefit from using our services and have had the opportunity to access investment from Meta via other means.

Given the major flaws in the legislation, it should not be assumed by news publishers or policymakers that Meta will be able to continue or increase on the current level of investment in Australian news when existing commercial agreements conclude after three years.

Contrary to some public rhetoric, the legislation is not about providing a framework to ensure fair dealings between digital platforms and news publishers in negotiations. It is about compelling digital platforms to enter into agreements even where they are not commercially sound, and no company in any industry should be expected to invest in partnerships with no expectation of a return.

It is well-recognised globally that arbitrary regulatory expropriation can discourage companies from investment or innovation.²⁰ This can have the unintended consequence of diminishing the benefits Australians experience from companies like digital platforms who may choose to limit the products or features that are brought here.

²⁰ See, for example, OECD, "*Indirect expropriation*" and the "*right to regulate*" in international investment law, 2004, https://www.oecd.org/daf/inv/investment-policy/WP-2004_4.pdf; and Productivity Commission, *Foreign investment in Australia*, 2020, <https://www.pc.gov.au/research/completed/foreign-investment/foreign-investment.pdf>.

2. The revenue received under commercial agreements has not solved the business model challenges of journalism.

There have been numerous inquiries in recent years that have examined the challenges currently faced by journalism's business model.

One of those factors is stronger competition for advertising revenue from innovative and newer companies like Meta. Stronger competition is ultimately good for the economy, as it generates significant benefits for Australian consumers and small businesses from more efficient, relevant and effective advertising. Globally, internet advertising has dropped in price by 42 per cent from 2010 to 2019 (at the same time that other forms of advertising increased in price).²¹

But there are much larger, tectonic shifts in technology and consumer behaviour that have been underway since the 1990s, when the commercial phase of the internet began and newspaper circulation began to decline in Australia. Technology has driven down the cost to distribute and access information. The advent of 24-hour cable television initially drew consumer attention and advertising from newspapers, followed by the proliferation of computers and then the smartphone which accelerated and expanded the sources where consumers could choose to find information. Publishers began facing declining circulation and advertising before the broad public adoption of the internet²² (and certainly before Facebook achieved any popularity within Australia).

There is now an abundance of content and, according to an expert report commissioned by the ACCC, "insufficient revenue around to support the amount of content being produced".²³ Previously news had been cross-subsidised by revenue from classifieds owned by the same companies, but this revenue has now shifted to online classified sites, many of which were spun out from news publishers themselves. In 2002, newspapers had 96% of classified revenues. By 2018, the total classified advertising market had grown to \$1.9 billion, but newspapers accounted for only 12% of the market.²⁴

²¹ *ibid.*

²² R Finkelstein, *Report of the independent inquiry into the media and media regulation [electronic resource]* (2012), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22library/lcatalog/00380162%22>

²³ D Wilding, P Fray, S Molitorisz and E McKewon, *The impact of digital platforms on news and journalistic content*, report commissioned by the ACCC, <https://www.accc.gov.au/system/files/ACCC%20commissioned%20report%20-%20The%20impact%20of%20digital%20platforms%20on%20news%20and%20journalistic%20content%2C%20Centre%20for%20Media%20Transition%20%282%29.pdf>.

²⁴ Alphabeta, *Australian Media Landscape Trends September 2020* <https://alphabeta.com/wp-content/uploads/2020/09/australian-media-landscape-report.pdf>

Collectively, the increased competition for time and attention, the decreasing costs of advertising and the shifts from classified revenues have strained the sustainability of journalism in Australia.

The investment that Meta (and Google) have brought to Australia provides a golden opportunity for news publishers to take a chance and accelerate their adaptation of business models. This is why we have made a significant investment in supporting innovation in public interest journalism and regional journalism. We hope grant funds, like the ones administered by The Walkley Foundation and Country Press Australia, can make a meaningful step-change in improving the sustainability of Australian journalism.

However, it is not possible to see the same potential resulting from commercial agreements. Of course, the expenditure of revenue gained under these agreements is at the discretion of news publishers and there is no obligation for them to use it in ways that reflect the public good. However, it appears some publishers are using this revenue to pay down debt, or issue distributions to shareholders.²⁵ Indeed, some companies have even cut journalism jobs after striking agreements after the legislation was passed.²⁶

People falsely believe this legislation has solved the challenge and created an ongoing revenue stream for news publishers. It encourages complacency among news publishers that existing flawed business models present a sustainable future for journalism. And it misleads publishers into believing that the business-as-usual activities that they choose to undertake on digital platforms are inherently deserving of compensation. This complacency and reduced incentives to innovate risks entrenching market position of a select group of publishers which is detrimental to competition and consumer choice overall.

It is not certain that digital platforms like Meta will be able to continue or increase on our investment in Australian news (given the flaws in the legislative framework), but it is also not clear that this revenue is being used by publishers to address the fundamental industry-wide shifts that placed them under pressure in the first place.

²⁵ S Elsworth, 'Nine Entertainment Chair Peter Costello says the media group has rebounded from Covid', *The Australian*, 11 November 2021, <https://www.theaustralian.com.au/business/media/nine-entertainment-chair-peter-costello-says-the-media-group-has-rebounded-from-covid/news-story/f2647deedcc902923e62f7e5af3d5d6b>; Z Samios, "'We will be number one": Seven boss determined to dominate TV sector by end of year', *Sydney Morning Herald*, 16 August 2021, <https://www.smh.com.au/business/companies/seven-west-media-swings-to-profit-reverses-writedown-of-tv-licence-20210816-p58j1k.html>.

²⁶ A Meade, 'News Corp Australia merges more than 20 regional newspapers with capital city mastheads', *The Guardian*, 29 April 2021, <https://www.theguardian.com/media/2021/apr/29/news-corp-australia-merges-more-than-20-regional-newspapers-with-capital-city-mastheads>.

If large media companies are going to argue that the government should intervene in commercial negotiations on their behalf because of the benefit of public interest journalism, it is only reasonable that the public should have some confidence it is being spent for proper purposes. It is a major flaw in the law that there is no oversight or expectations placed on news publishers to ensure that the ultimate public policy goals are addressed and not used as an excuse for profiteering by large media companies.

3. The law is inequitable and is being rapidly outdated by consumer and industry trends.

One of the fundamental flaws is the law's structure that enables for entirely arbitrary decisions about which companies are candidates for designation. We have concerns about expectations that two companies - Meta and Google - are expected to be responsible for the sustainability of the Australian news industry.

Firstly, there are major flaws in the ACCC's analysis that identified Facebook as a candidate for designation in the first place. These are covered in detail in previous submissions but, in short, the analysis does not recognise that Meta derives very little profit or revenue from news links on our platforms. Accessing news is not the core reason why people use Facebook: in the last 90 days, less than 4% of Feed views in Australia are attributable to organic article links from Australia news publishers.²⁷ Even by the ACCC's own assessment at the time (which was based on an unverified and artificial construction of a narrow market, designed to exaggerate Facebook's role in the news ecosystem), Facebook only accounts for 18 per cent of the hypothetical "news referral market" defined by the ACCC.²⁸ Putting aside the fact that we do not agree that we participate in any hypothetical "news referral market" this is clearly not a substantial market share.

Secondly, the ACCC's analysis has not considered other digital platforms - some larger than Meta - which play a material and growing role in referring traffic to news publishers. For example, Apple has a dedicated product - Apple News - which is installed on their phones by default and generates notifications to grab users' attention and direct them to news sites. There has been remarkably little scrutiny of the commercial arrangements around this product and how they compare to our product, Facebook News. Since the Digital Platforms Inquiry, Apple has emerged as a significant and rapidly growing competitor in the ads space, and its iOS 14 policy updates will have a direct impact on Meta's global revenue of around \$10 billion in 2022 alone.

²⁷ News publishers as defined by list provided by the ACCC in September 2020. Last 90 days ending April 2, 2022.

²⁸ ACCC, *Digital Platforms Inquiry final report*, page 101.

Similarly, Microsoft maintains a dedicated news product called Microsoft News. In fact, they publicly supported the news media bargaining law at the time.²⁹ Given Microsoft said they “support the concept of tech companies paying media companies for news”, scrutiny would be welcome of what steps they have taken to financially support the Australian news industry.³⁰

We believe our products and investments would stack up highly favourably when compared to the efforts of these other digital platforms. The multitude of options available like these products is entirely inconsistent with the original assertion from the ACCC that underpinned the law that Facebook is an “unavoidable trading partner” for news organisations.

Thirdly, digital markets change rapidly but there is no formal mechanism under the legislation to consider this change, to independently assess the current state of digital markets, and to be clear on which companies are possible candidates for designation (and why). Since the legislation was passed, the relationship between digital platforms and news publishers has already evolved:

- The role that Facebook plays in providing news has continued to shrink. The percentage of Australians using Facebook for news has dropped sharply from 45 per cent to 33 per cent since 2016.³¹ Other social media companies have also significantly grown in market share: for example, Australian TikTok users spent almost one day per month (23.4 hours) on TikTok in 2021, an increase of 39% from 2020 and 200% from 2019.³² This compares with 17.6 hours per month on Facebook and 8.3 hours on Instagram.³³
- Similarly, the demands of consumers from digital platforms continue to evolve. Even since the legislation was passed, there is much stronger demand for different types of content, including short-form video and from individual creators.

²⁹ B Smith, ‘Microsoft supports Australian proposal addressing news media and digital platforms’, *Microsoft News*, 3 February 2021, <https://news.microsoft.com/en-au/2021/02/03/microsoft-supports-australian-government-proposal-addressing-news-media-and-digital-platforms/#:~:text=Microsoft%20fully%20supports%20the%20News,platforms%20and%20Australian%20news%20businesses>.

³⁰ Z Samios and J McDuling, ‘Microsoft backs proposed media bargaining laws’, *Sydney Morning Herald*, 3 February 2021, <https://www.smh.com.au/technology/microsoft-pledges-to-fill-hole-if-google-follows-through-with-threats-to-exit-australia-20210203-p56z3n.html>

³¹ S Park et al., *Digital News Report: Australia 2021*, 23 June 2021, https://apo.org.au/sites/default/files/resource-files/2021-06/apo-nid312650_0.pdf.

³² *State of Mobile 2022*, 12 January 2022, report by data.ai, available: <https://www.data.ai/en/go/state-of-mobile-2022/>.

³³ *ibid.*

As the ways people consume news and information on Facebook change, publishers should be prepared. For example, if you mostly use Facebook to promote links to news articles, we would expect organic performance to decrease over time based on what users are engaging with today [video] as compared to a few years ago. Watching video is half of time spent on Facebook and Instagram, and short-form video is our fastest growing content format by far.³⁴

As with any company, Meta needs to adapt to respond to changing consumer preferences and there is no guarantee that products like Facebook News will satisfy consumers in the long run.

Without any mechanism to keep pace with the evolution of digital markets, the assumption will be reinforced that only Google and Meta are possible candidates for designation. This discriminates against two US companies and puts them at a significant disadvantage to our competitors, including companies that come from China and other countries that propagate very different visions for the internet. Aside from distorting competition in digital markets, it also results in greater uncertainty for news publishers about which companies they can expect to make contributions to the Australian news ecosystem.

4. The law is so punitive it could never work in practice, if a company was designated.

Part of the amendments and guarantees provided in our discussions with the Australian Government in February 2021 involved the Government making it clear that their preference was for commercial deals to be struck between digital platforms and news publishers, without needing to resort to designating companies.

We acknowledge that the threat of regulation can at times constrain or modify market behaviour in ways that are in the public interest, without needing to resort to enforcement of that regulation. It is a reasonable regulatory principle and can represent a legitimate method of achieving public policy objectives with a light-touch impact on the overall regulatory burden.

However, if it ever came to pass that a company was designated, the regulatory regime is so punitive and disproportionate that it is hard to see how any digital platform could ever operate under such a scheme.

³⁴ Meta, 'Launching Facebook Reels globally', *Meta Newsroom*, 22 February 2022, <https://about.fb.com/news/2022/02/launching-facebook-reels-globally/>.

We have previously discussed many elements of the regime that we see as excessively punitive, including:

- Compulsion to deal with every publisher, regardless of whether or not they engage with our services or offer any commercial value.
- The choice of a ‘final offer arbitration’ model to determine price is tantamount to price regulation, which is highly unusual and not used in any other regulatory setting in Australia. It also does not provide any step in which it could be considered whether a commercial agreement is justified in the first place.
- Penalties, which are exponentially larger in quantum and broader in application than the penalties under other industry codes in Australia.
- The lack of ability to seek review of decisions made under the legislative framework, meaning this regime is subject to significantly less scrutiny than other laws relating to Commonwealth decision-making.
- A non-differentiation clause that would make it essentially impossible for companies like Meta to offer and manage a product like Facebook News.

These aspects remain deeply concerning.

However, the aspect of the legislation which the last 12 months have revealed to be even more problematic than previously expected is the ambiguous and broad definition of “news publishers”. When the legislation was passed, it was unclear what type of publishers could qualify under the legislation but we cautioned the number of organisations who could qualify would be well over 200. We also cautioned that the vague definition and low threshold could encourage ‘fly by night’ publishers who are created solely to take advantage of the legislative regime. We also warned that publishers would structure themselves in ways to artificially exaggerate the number of ‘news sources’ they provide.

This exact outcome has come to pass.

The Australian Communications and Media Authority (ACMA) has registered a number of news sources who should not - on any reasonable view of their activities or the policy intent of the law - be entitled to any commercial agreement with Meta. Some examples include:

- **News Cop.** Recent reporting identified a company called “News Cop”, described as “an almost-unknown site without a physical address... Until recently, the News

Cop site credited reporters with accompanying pictures that appear to have been faked”.³⁵

- **SBS’ individual language services.** SBS has registered 63 separate language services as separate news sources under the code. This means, if designated, we could be compelled to negotiate an agreement with each one of the 63 news sources. Some of them (like SBS Hakha Chin) do not have a Facebook presence; some (like SBS Kirundi) barely use Facebook, posting only five times in the first five months of 2022; and many of them cross-post the same content across almost all of Pages (for example, live broadcasting of the ANZAC Day Dawn Service). These are functionally not separate ‘news sources’ and should not be allowed to register as separate news sources for the purposes of commercial negotiations.
- **Urban news publications.** In the Minister’s second reading speech for the legislation, the law was described as supporting “public interest journalism ... which is critical to the functioning of our democracy”.³⁶ The level of regulatory intervention in the legislation was presented as necessary for the health of our democracy. As much as urban news that covers entertainment, hospitality and shopping may be informative for residents of large cities, it is clearly not within the spirit of organisations intended to be captured by the legislation, according to the then-Government’s public rhetoric.

These examples illustrate the concern Meta raised that the sheer number of potential organisations that could exploit the vague definition of “news source” would represent a dramatically large regulatory burden for any company who may find themselves to be designated.

Although it does not currently apply to any company, the punitive nature of the legislation is crucial for two reasons.

1. A more punitive law means digital platforms will feel they have no choice but to make increasingly uncommercial decisions to try to stave off the risk of designation.
2. A future Treasurer may take a different view on what constitutes a significant contribution to the sustainability of journalism. Given Facebook has been identified as a candidate for designation on the basis of mischaracterisations by

³⁵ B Kaye, ‘Australia puts website accused of fake journalists on register for payments by Facebook, Google’, *Reuters*, 23 December 2021, <https://www.usnews.com/news/world/articles/2021-12-23/exclusive-australia-puts-website-accused-of-fake-journalists-on-register-for-payment-by-facebook-google>

³⁶ J Frydenberg, *Minister’s second reading speech - News Media Bargaining Code Act 2021*, 9 December 2020.

the ACCC, there is a high in-built level of subjectivity in the law that could easily extend to other digital platforms at short notice. This provides enormous uncertainty for digital platforms and runs the risk that a future Treasurer could abuse the regime by non-transparently directing international companies to provide payment to some selected or preferred news publisher. Because the law is so punitive, and as there are so limited avenues for review and oversight, companies have limited opportunities to have such a decision reviewed.

Correcting misconceptions

The news media bargaining law and debate around the relationship between digital platforms and publishers is based on a number of serious misconceptions.

To assist in a more informed discussion about the legislation and future policy developments, we highlight X misconceptions about the relationship between the Facebook service and news publishers.

Misconception #1: Meta steals or improperly takes content created by news organisations without paying for it.

Meta does not steal or scrape publisher content. Publisher content appears on Facebook for one of three reasons.

1. Publishers choose what content to post to their Facebook Page. Publishers can choose to post content in order to build an audience, engage a community, monetise it directly on Facebook via customised monetisation tools, or to drive traffic back to their owned and operated sites.

The overwhelming majority of news content on Facebook is posted by publishers themselves. In the last 90 days, for example, more than 85 per cent of organic views on article links from Australian news publishers were from what the publishers had posted themselves (rather than users).³⁷

2. Users choose to share a link to publisher content on Facebook, often using sharing functionality a publisher adds to their own webpage. People share news content to discuss it with their friends and family, and when they do choose to share news content, Facebook respects the monetisation and data flow decisions that publishers have applied to that content.
3. Facebook commissions publishers to produce new, high-quality content to be shared on Facebook or other digital news distribution platforms. Facebook enters into commercial deals with Australian news publishers for high-quality content to appear in specialised products, like Facebook Watch, when additional investment is desired.

³⁷ News publishers as defined by list provided by the ACCC in September 2020. Last 90 days ending April 2, 2022

Much of the public narrative about this issue overlooks the roles and choices of publishers and consumers. Meta does not control how publishers choose to use our free tools and services, and users ultimately decide what content formats and subjects are most important to them.

Misconception #2: Meta profits from news content.

News accounts for a very small amount of the content in the average Facebook user's Feed. Accessing news is not the core reason why people use Facebook: in the last 90 days, less than 4% of Feed views in Australia are attributable to organic article links from Australia news publishers.³⁸ While on social media, many say they are exposed to news incidentally rather than actively seeking it. Almost half of those who use Facebook for news (46%) say they mainly see news while they are on it for other reasons.

The overwhelming majority of the engagement and time spent on Facebook is on non-news content. As outlined earlier, consumers are increasingly moving even further away from news on our services and more towards content format like short-form video and individual creators.

When someone clicks on a news link on Facebook, they are directed to the publishers' own website. Any advertising they see on that site belongs to the news publisher - not Facebook. We do not make any charge or take any cut of advertising revenue publishers earn as a result of referral traffic from our services.

Meta does not traffic ads against news links posted by publishers (or any other user). Advertising that appears in Feed is targeted based on the interests of the user and is not "attached" to any particular content or link post in Feed. However, Meta does run advertising against video content, including news video. In this instance, Meta pays a 55% net revenue share to the publisher.

The challenges in finding a sustainable business model for news are well-known. Previously, news had been cross-subsidised by revenue from classifieds owned by the same companies.

On the contrary to this misconception, we would suggest that Meta has invested so heavily in measures to benefit the news industry that, if there was a quantification of the benefits we receive versus the benefits we provide, it would be clear that the value

³⁸ News publishers as defined by list provided by the ACCC in September 2020. Last 90 days ending April 2, 2022

publishers receive from us far outweighs any value we might receive from their news content.

As set out above, Facebook is an opt-in platform, where users and publishers engage by choice. It is entirely voluntary. Publishers choose to put their content on their Pages, to enable third party sharing to organically reach new audiences, or to enter into a commercial deal where Meta pays for content (for example, where new, high-quality content appears on surfaces like Facebook Watch). They also choose whether to use the customised products Meta has built into Facebook and which enable publishers to monetise their content on our services.

They would not do so voluntarily unless they derive value.

When publishers or people share links to publisher content like articles on Facebook, and people click on those articles, they are redirected to publisher sites where publishers can show ads or sell subscriptions. Publishers keep **all** of the revenue they generate from this referral traffic driven to their sites from Facebook. Facebook does not earn any revenue from that traffic and does not charge for distributing publisher content. In addition publishers can choose to use tools to monetise their content directly on Facebook. For example, publishers can choose to post video directly to Facebook and have those videos monetised through in-stream ads.

Misconception #3: There is an imbalance of bargaining power in commercial relationships between Meta and news publishers.

The justification for this law, and one of the criteria for designation under the law, is a supposed significant imbalance of bargaining power between Meta and news publishers, which is a claim solely based on the ACCC's final report in the 2019 Digital Platforms Inquiry. That claim was not grounded in evidence at the time, and today, is even less consistent with commercial realities.

1. This is based on dated analysis. The Digital Platforms Inquiry concluded in July 2019, nearly 3 years ago, and no attempt has been made by the ACCC to even consider changes in the market since that time.
2. Digital markets are highly innovative and dynamic, and evidence of new entry and expansion with platforms playing a growing role in referring traffic to news publishers in recent years bears this out. As noted above, the growth of Apple and TikTok as just two examples has not been accounted for.

3. Even without this and as noted above, the ACCC's own analysis at the time (which is based on a narrow and artificial construction of a market designed to exaggerate Facebook's role) shows Facebook accounts for only a small portion of referral traffic to news publishers. And this role has continued to shrink.

The reality is that publishers are not dependent on Facebook and Facebook is by no means a "must-have" channel. Publishers have a multitude and growing number of services on which they can choose to share their content to grow their audience or, indeed, they can rely on consumers who directly engage with their content via their own website, apps, email newsletters or other channels. This is not a characteristic of Meta having any significant imbalance of bargaining power in commercial relationships with news publishers.

Even if such a substantial imbalance of bargaining power did exist (which we do not believe to be the case), it does not necessarily require government intervention as disproportionate as this law. Differences in bargaining power between businesses exists right across the economy - with airlines, banks, utility providers, insurance companies, and in many other sectors. Instead of regulatory intervention to attempt to even out the bargaining power of every business, we rely on competition laws that target businesses when they misuse any market power they accrue. Australian competition laws are highly flexible and robust and more than able to target any business behaviour the ACCC and courts believe is a threat to fair competition.

Misconception #4: Meta relies on news content to combat misinformation on Facebook.

Meta has invested heavily in combating misinformation on our services. We take a number of measures that fall under a comprehensive three-part framework.

- Remove misinformation that could cause imminent, physical harm; and we allow for appeals in instances where we may not get this right;
- Reduce the spread of fact-checked misinformation; and
- Promote authoritative information and develop tools to inform our users.

While we enter into commercial agreements with fact-checking organisations who have been accredited by the International Fact Checking Network (such as Agence France Presse, Australian Associated Press and RMIT FactLab), we do not engage news organisations for fact checking purposes. News content is not required for our comprehensive approach to combating misinformation.

The role of news organisations as it relates to misinformation requires further examination. It appears the community perception of “misinformation” also extends to news that they perceive as biased. As outlined in the 2021 Digital News Report, “the [Digital News Research] and other research, clearly show that perceptions of bias, political and commercial interests also erode perceptions of trust in news”. Research conducted recently by the Digital Industry Group Inc. also found that 81 per cent of the community believes misinformation is just as likely to be found in traditional media as online media.

Misconception #5: All Australian news organisations are entitled to commercial agreements from Meta.

Much of the discussion around the law is underpinned by an assumption that all news publishers in Australia are entitled to payment from Meta simply for using our free services to their own benefit.

Partly, this is driven by a misunderstanding that the law only applies to companies once they are designated. Some publishers have assumed these obligations currently apply to companies like Meta and Google, even though no digital platform has been designated.

Others believe that digital platforms who have been flagged as candidates for designation should only be able to hold off designation by entering into commercial agreements with a scope of publishers that exactly reflects the scope of news publishers that would be registered by the ACMA and entitled to access mediation and final arbitration. This is not required under the law. In considering whether to designate a digital platform, the Treasurer is only required to assess if a digital platform has made a significant contribution to the Australian news ecosystem.

This wording only requires a digital platform to make a contribution in aggregate. It is up to the judgement of the Treasurer as whether the overall amount represents a significant contribution.

Alternative regulatory approaches

Given the importance of news to Australia's democracy and public debate, Meta recognises the importance of Australian news organisations, the Government and the public having confidence in the role that digital platforms play in the news sector.

There have been a large number of Australian inquiries into journalism and the impact of digital platforms in the last decade:

- The Finkelstein independent inquiry into the media and media regulation (2012)
- Parliamentary inquiry into the future of public interest journalism (2018)
- The ACCC's Digital Platforms Inquiry (2019)
- The Government consultation on the Digital Platforms Inquiry (2019)
- Consultation processes attached to the news media bargaining law, undertaken by both the Government and the Parliament (2020)
- Parliamentary inquiry into regional newspapers (2021-22).

Meta actively and constructively engaged with the Australian Government's consultation processes in developing the news media bargaining law over the course of three years. We long supported regulatory frameworks that could provide transparency and accountability for our dealings with news organisations, including preparing draft codes in 2019 and 2020 that would have addressed the stated policy objectives of the Government.³⁹ These were ultimately disregarded by the then-Government for price regulation instead.

We remain ready to discuss with the Australian Government possible legislative amendments that could address the four concerns we have outlined above.

³⁹ N Clegg, 'Smart regulation can deliver a better Internet for all Australians', Sydney Morning Herald, August 2019, <https://www.smh.com.au/business/companies/smart-regulation-can-deliver-a-better-internet-for-all-australians-20190731-p52cm5.html>; J Kaplan, 'Australian values can shape the internet of the future', The Australian, 26 November 2019, <https://www.theaustralian.com.au/business/technology/australian-values-can-shape-the-internet-of-the-future/news-story/0238d15ce068689365809f30c0e37556>; M Garlick, Smart regulation must promote trust, innovation and choice for all Australians, blog post and submission published 16 September 2019, <https://www.facebook.com/notes/facebook-australia-new-zealand-policy/smart-regulation-must-promote-trust-innovation-and-choice-for-all-australians/2417839498543309/>; M Garlick, Transparency and fairness for all publishers is key to success for new code, blog post published 10 February 2020, <https://www.facebook.com/notes/facebook-australia-new-zealand-policy/transparency-and-fairness-for-all-publishers-is-key-to-success-for-new-industry-/2561697627490828/>; M Garlick, A Digital News Distribution Code for the Australian News Ecosystem, blog post published 18 March 2020, https://www.facebook.com/notes/facebook-australia-new-zealand-policy/a-digital-news-distributor-code-for-the-australian-news-ecosystem/2594059480921309/?_tn=HH-R.