



# **Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021**

**No. 21, 2021**

**An Act to amend the *Competition and Consumer Act 2010* in relation to digital platforms, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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No. 21, 2021

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**An Act to amend the *Competition and Consumer Act 2010* in relation to digital platforms, and for related purposes**

[Assented to 2 March 2021]

The Parliament of Australia enacts:

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No. 21, 2021

*Treasury Laws Amendment (News Media and Digital Platforms  
Mandatory Bargaining Code) Act 2021*

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## 1 Short title

This Act is the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	3 March 2021
2. Schedule 1	The day after this Act receives the Royal Assent.	3 March 2021

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Digital platforms and Australian news businesses**

### **Part 1—Main amendments**

#### *Competition and Consumer Act 2010*

##### **1 After Part IVB**

Insert:

### **Part IVBA—News media and digital platforms mandatory bargaining code**

#### **Division 1—Basic concepts**

##### **52A Definitions**

In this Part:

*ACMA* means the Australian Communications and Media Authority.

*bargaining news business representative*, for a registered news business, has the meaning given by section 52ZD.

*bargaining parties* has the meaning given by section 52ZG.

*core bargaining issues* has the meaning given by section 52ZG.

*core news content* means content that reports, investigates or explains:

- (a) issues or events that are relevant in engaging Australians in public debate and in informing democratic decision-making; or
- (b) current issues or events of public significance for Australians at a local, regional or national level.

*covered news content* means content that is any of the following:

- (a) core news content;

- (b) content that reports, investigates or explains current issues or events of interest to Australians.

**designated digital platform corporation** means a corporation that is specified as a designated digital platform corporation in a determination under section 52E.

**designated digital platform service**, of a designated digital platform corporation, means a service that is specified as a designated digital platform service of the corporation in a determination under section 52E.

**news business** means:

- (a) a news source; or  
(b) a combination of news sources.

**news source** means any of the following, if it produces, and publishes online, news content:

- (a) a newspaper masthead;  
(b) a magazine;  
(c) a television program or channel;  
(d) a radio program or channel;  
(e) a website or part of a website;  
(f) a program of audio or video content designed to be distributed over the internet.

**registered news business** means a news business that is registered under section 52G.

**registered news business corporation**:

- (a) a **registered news business corporation** means a corporation that is registered under section 52G; and  
(b) a **registered news business corporation**, for a registered news business, means the corporation that is endorsed under section 52G as the registered news business corporation for the registered news business.

**register of bargaining code arbitrators** means the register established under section 52ZK.

**remuneration issue** has the meaning given by subsection 52ZL(1).

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***represented registered news business*** has the meaning given by section 52ZG.

***responsible digital platform corporation*** for a designated digital platform service is:

- (a) a corporation that:
  - (i) is a related body corporate of the service's designated digital platform corporation; and
  - (ii) if the corporation is not incorporated in Australia—is managed in Australia; and
  - (iii) either by itself or together with other corporations, operates or controls the designated digital platform service in supplying services that are used by Australians; or
- (b) if there is no corporation that satisfies the requirements of paragraph (a)—the service's designated digital platform corporation.

## **52B Making content available**

- (1) For the purposes of this Part, a service makes content available if:
  - (a) the content is reproduced on the service, or is otherwise placed on the service; or
  - (b) a link to the content is provided on the service; or
  - (c) an extract of the content is provided on the service.
- (2) Subsection (1) does not limit, for the purposes of this Part, the ways in which a service makes content available.

## **52C Interacting with content**

- (1) For the purposes of this Part, a user of a service interacts with content made available by the service if:
  - (a) the content is reproduced on the service, or is otherwise placed on the service, and the user interacts with the content; or
  - (b) a link to the content is provided on the service and the user interacts with the link; or
  - (c) an extract of the content is provided on the service and the user interacts with the extract.

- (2) Subsection (1) does not limit, for the purposes of this Part, the ways in which a user of a service interacts with content made available by a service.

## 52D Distributing content

- (1) For the purposes of this Part, the following are examples of ways in which a service distributes content that is made available by the service:
- (a) ranking the content;
  - (b) curating the content;
  - (c) making the content more or less prominent;
  - (d) making a user more or less likely to interact with the content.

- (2) Subsection (1) does not limit, for the purposes of this Part, the ways in which a service distributes content that is made available by the service.

- (3) For the purposes of this Part, treat the following alterations as alterations to the ways in which a service distributes content that is made available by the service:

- (a) an alteration to the ways in which the service distributes a particular class of content;

Example 1: An alteration that increases the prevalence or prominence of video content made available by the service by making such video content play automatically.

Example 2: An alteration that increases or decreases the prevalence or prominence of content made available by the service with which users of the service have previously interacted.

Example 3: An alteration that increases the prevalence or prominence of content made available by the service by making extracts from the content available on the service automatically.

Example 4: An alteration that increases the ranking of content made available by the service if a user's friends and family have interacted with content.

- (b) an alteration to the ways in which the service distributes content of a particular content creator, or class of content creators;

Example 1: An alteration that increases or decreases the prevalence or prominence of content made available by the service if the

content is created by a news business that has facilities to make content load rapidly.

Example 2: An alteration that decreases the prevalence or prominence of content made available by the service if the content is created by an automated account.

Example 3: An alteration that decreases the prevalence or prominence of content made available by the service if the content is from a particular website, where attempts have been made to manipulate rankings of content from the website.

Example 4: An alteration that decreases the prevalence or prominence of content made available by the service if the content is from an account of a celebrity or other prominent individual.

(c) an alteration to the ways in which the service distributes a particular class of content in relation to a particular class of users of the service.

Example 1: An alteration that prevents inappropriate content being made available by the service to children.

Example 2: An alteration that increases the prevalence or prominence of particular content made available by the service to users of a particular age.

Example 3: An alteration that decreases the prevalence or prominence of particular content made available by the service to users who have indicated they do not wish to see such content.

Example 4: An alteration that increases the prevalence or prominence of content made available by the service to users who are affected by a natural disaster, if the content is reliable information about the disaster.

(4) Subsection (3) does not limit, for the purposes of this Part, the kinds of alterations that are alterations to the ways in which a service distributes content that is made available by the service.

## **Division 2—Designated digital platform corporation and designated digital platform services**

### **52E Minister may make designation determination**

- (1) The Minister may, by legislative instrument, make a determination that:
- (a) specifies one or more services covered by subsection (2) in relation to a corporation as *designated digital platform services* of the corporation; and

- (b) specifies the corporation as a *designated digital platform corporation*.
- (2) This subsection covers a service in relation to a corporation if:
  - (a) the corporation, either by itself or together with one or more related bodies corporate of the corporation, operates or controls the service; or
  - (b) a related body corporate of the corporation, either by itself or together with one or more other related bodies corporate of the corporation, operates or controls the service.
- (3) In making the determination, the Minister must consider:
  - (a) whether there is a significant bargaining power imbalance between Australian news businesses and the group comprised of the corporation and all of its related bodies corporate; and
  - (b) whether that group has made a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses (including agreements to remunerate those businesses for their news content).
- (4) In making the determination, the Minister may consider any reports or advice of the Commission.
- (5) Before making the determination, the Minister must give the corporation notice in writing that the Minister intends to make a determination under subsection (1) specifying the corporation and a particular service or particular services.
- (6) The Minister must not make the determination before the end of the period of 30 days starting on the day on which the notice under subsection (5) is given.

### **Division 3—Registered news businesses and registered news business corporations**

#### **52F Application for registration of news business and news business corporation**

- (1) A corporation (the *applicant corporation*) may apply to the ACMA, in relation to a news business, for:
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- (a) if the news business is not already a registered news business—the registration of the news business; and
  - (b) if the applicant corporation is not already a registered news business corporation—the registration of the applicant corporation; and
  - (c) the endorsement of the applicant corporation as the registered news business corporation for the news business.
- (2) The application must:
- (a) be in writing; and
  - (b) set out every news source that comprises the news business; and
  - (c) set out details of the applicant corporation’s point of contact for the purposes of section 52Z; and
  - (d) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.
- (3) The news business set out in the application may be comprised of some or all of the news sources that the applicant corporation, either by itself or together with other corporations, operates or controls.

## **52G Registration of news business and news business corporation**

- (1) If the ACMA considers that the requirement in subsection (2) is met, the ACMA must:
- (a) if the news business is not already a registered news business—register the news business; and
  - (b) if the applicant corporation is not already a registered news business corporation—register the applicant corporation; and
  - (c) endorse the applicant corporation as the registered news business corporation for the news business.
- (2) The requirement in this subsection is met if:
- (a) the application is in accordance with subsection 52F(2); and
  - (b) if the news business is not already a registered news business—none of the news sources set out in the application in accordance with paragraph 52F(2)(b) form part of another news business that is a registered news business; and

- (c) if the news business is not already a registered news business—all of the following requirements are met in relation to the news business:
    - (i) the requirement in subsection 52N(1) (the content test);
    - (ii) the requirement in subsection 52O(1) (the Australian audience test);
    - (iii) the requirement in subsection 52P(1) (the professional standards test); and
  - (d) if the applicant corporation is not already a registered news business corporation—the applicant corporation meets the requirement in subsection 52M(1) (the revenue test); and
  - (e) the applicant corporation meets the requirement in section 52L (connection between applicant corporation and news business) in relation to the news business.
- (3) The ACMA must publish details of each registration and endorsement on the ACMA’s website (including details of the applicant corporation’s point of contact for the purposes of section 52Z).

## **52H Revocation of registration or endorsement—general**

### *Revocation of registration of news business*

- (1) The ACMA may revoke the registration of a registered news business if the ACMA considers that one or more of the news sources that form part of the registered news business form part of another registered news business.
- (2) The ACMA may revoke the registration of a registered news business if the ACMA considers that any of the following requirements are *not* met in relation to the news business:
  - (a) the requirement in subsection 52N(1) (the content test);
  - (b) the requirement in subsection 52O(1) (the Australian audience test);
  - (c) the requirement in subsection 52P(1) (the professional standards test).
- (3) The ACMA may revoke the registration of a registered news business if there is no registered news business corporation that is

endorsed as the registered news business corporation for the news business.

*Revocation of registration of corporation*

- (4) The ACMA may revoke the registration of a registered news business corporation if the ACMA considers that the corporation does not meet the requirement in subsection 52M(1) (the revenue test).
- (5) The ACMA may revoke the registration of a registered news business corporation if the corporation is not endorsed as the registered news business corporation for at least one registered news business.

*Revocation of registration of endorsement of corporation for news business*

- (6) The ACMA may revoke the endorsement of a registered news business corporation as the registered news business corporation for a registered news business if the ACMA considers that the corporation does not meet the requirement in section 52L (connection between corporation and news business) in relation to the registered news business.
- (7) To avoid doubt, the ACMA may revoke the endorsement of a registered news business corporation as the registered news business corporation for a registered news business at the same time as it endorses another registered news business corporation as the registered news business corporation for the registered news business.

Example: A registered news business corporation (the *selling corporation*) sells a registered news business to another corporation. The other corporation applies under section 52G for registration as a registered news business corporation and for endorsement as the registered news business corporation for the registered news business. The ACMA grants the application at the same time as revoking the endorsement of the selling corporation as the registered news business corporation for the registered news business.

**52I Revocation of registration or endorsement—false or misleading information or documents**

- (1) This section applies if, as a result of an application by a corporation under section 52F, the ACMA:
  - (a) registered a news business; or
  - (b) registered a corporation; or
  - (c) endorsed a corporation as the registered news business corporation for a news business.
- (2) The ACMA may revoke the registration or endorsement if the ACMA considers that the corporation, in making the application, gave the ACMA information that was or documents that were false or misleading in a material particular.
- (3) To avoid doubt, for the purposes of this section, information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

**52J Obligation on registered news business corporation to notify ACMA of loss of qualification for registration**

- (1) The registered news business corporation for a registered news business must notify the ACMA, as soon as practicable, if any of the following requirements are no longer met in relation to the registered news business corporation or the registered news business:
  - (a) the requirement in subsection 52N(1) (the content test);
  - (b) the requirement in subsection 52O(1) (the Australian audience test);
  - (c) the requirement in subsection 52P(1) (the professional standards test);
  - (d) the requirement in subsection 52M(1) (the revenue test);
  - (e) the requirement in section 52L (connection between corporation and news business).
- (2) The notification must be in writing.



## **52K Adding or removing news source from registered news business**

- (1) A registered news business corporation for a registered news business may apply to the ACMA for:
  - (a) the addition of a news source to the news business; or
  - (b) the removal of a news source from the news business.
- (2) The application must:
  - (a) be in writing; and
  - (b) set out every news source that comprises the news business; and
  - (c) specify the news source to be added or removed; and
  - (d) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.
- (3) The ACMA may add the news source to the news business if the ACMA considers that:
  - (a) the application is in accordance with subsection (2); and
  - (b) the news source does not form part of another news business that is a registered news business; and
  - (c) the corporation would continue to meet the requirement in 52L (connection between applicant corporation and news business) in relation to the news business if the news source were added to the news business; and
  - (d) the news business would continue to meet all of the following requirements if the news source were added to the news business:
    - (i) the requirement in subsection 52N(1) (the content test);
    - (ii) the requirement in subsection 52O(1) (the Australian audience test);
    - (iii) the requirement in subsection 52P(1) (the professional standards test).
- (4) The ACMA may remove the news source from the registered news business if the application is in accordance with subsection (2).
- (5) The ACMA must publish details of the addition or removal on the ACMA's website.

**52L Requirements for connection between corporation and news business**

For the purposes of this Division, the requirement is that the corporation, either by itself or together with other corporations, operates or controls the news business.

**52M Revenue test**

- (1) For the purposes of this Division, the requirement is that the annual revenue of the corporation (or of a related body corporate of the corporation), as set out in the corporation's (or the related body corporate's) annual accounts prepared in accordance with generally accepted accounting principles, exceeds \$150,000:
  - (a) for the most recent year for which there are such accounts; or
  - (b) for at least 3 of the 5 most recent years for which there are such accounts.
- (2) Subsection (3) applies if:
  - (a) the corporation (or the related body corporate) acquired a business; and
  - (b) the business' annual revenue for a year starting before the acquisition is ascertainable from annual accounts prepared in accordance with generally accepted accounting principles.
- (3) For the purposes of subsection (1) treat the revenue of the corporation (or of the related body corporate) for the year mentioned in paragraph (2)(b) as including the business' annual revenue for that year.

**52N Content test**

- (1) The requirement in this subsection is met in relation to a news business if the primary purpose of each news source covered by subsection (2) is to create content that is core news content.
- (2) This subsection covers a news source if it comprises, whether by itself or together with other news sources, the news business.

- (3) For the purposes of subsection (1), in determining whether the primary purpose of a news source is to create content that is core news content, take into account the following matters:
- (a) the amount of core news content created by the news source;
  - (b) the frequency with which the news source creates core news content;
  - (c) the degree of prominence given to core news content created by the news source, compared with the degree of prominence given to other content created by the news source;
  - (d) any other relevant matter.

#### **52O Australian audience test**

- (1) The requirement in this subsection is met in relation to a news business if every news source covered by subsection (2) operates predominantly in Australia for the dominant purpose of serving Australian audiences.
- (2) This subsection covers a news source if it comprises, whether by itself or together with other news sources, the news business.

#### **52P Professional standards test**

- (1) The requirement in this subsection is met in relation to a news business if:
- (a) every news source covered by subsection (2):
    - (i) is subject to the rules of the Australian Press Council Standards of Practice or the Independent Media Council Code of Conduct; or
    - (ii) is subject to the rules of the Commercial Television Industry Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcast Television Codes of Practice; or
    - (iii) is subject to the rules of a code of practice mentioned in paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983* or paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*; or
    - (iv) is subject to internal editorial standards that are analogous to the rules mentioned in subparagraph (i),

- (ii) or (iii) to the extent that they relate to the provision of quality journalism; or
  - (v) is subject to rules specified in the regulations that replace those mentioned in subparagraph (i), (ii) or (iii); or
  - (vi) is subject to other rules specified in the regulations; and
  - (b) every news source covered by subsection (2) has editorial independence from the subjects of its news coverage.
- (2) This subsection covers a news source if it comprises, whether by itself or together with other news sources, the relevant news business.

## **Division 4—General requirements**

### **Subdivision A—Preliminary**

#### **52Q Obligations in respect of digital platform services individually**

- (1) The provisions of Subdivisions B and C create obligations in respect of every designated digital platform service, in respect of each registered news business.
- (2) Those obligations are placed on the responsible digital platform corporation for the designated digital platform service, in respect of the registered news business corporation for the registered news business.
- (3) If there is more than one responsible digital platform corporation for the designated digital platform service:
  - (a) those obligations are placed on each of those responsible digital platform corporations separately; and
  - (b) treat references in Subdivision B and C to the responsible digital platform corporation for the designated digital platform service as being references to each responsible digital platform corporation for the designated digital platform service.

## **Subdivision B—The minimum standards**

### **52R Giving list and explanation of data provided to registered news businesses**

- (1) If the designated digital platform service makes available covered news content of the registered news business, the responsible digital platform corporation for the designated digital platform service must ensure that:
    - (a) information covered by subsection (2) is given to the registered news business corporation for the registered news business; and
    - (b) the information is given in terms that are readily comprehensible; and
    - (c) if there are other designated digital platform services of the responsible digital platform corporation—the information is given in terms that relate specifically to the designated digital platform service (and not in terms that relate to that service and those other designated digital platform services in aggregate); and
    - (d) the information is given to the registered news business corporation no later than 28 days after the day on which the registered news business was registered under section 52G; and
    - (e) if regulations made for the purposes of this paragraph specify other requirements for that information—those requirements are satisfied.
  - (2) This subsection covers information that comprises lists and explanations of the types of data covered by subsection (3).
  - (3) This subsection covers data:
    - (a) that relates to interactions of users of the designated digital platform service with covered news content made available by the designated digital platform service; and
    - (b) that the designated digital platform service provides to one or more registered news businesses.
  - (4) The responsible digital platform corporation for the designated digital platform service must ensure that:
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- (a) updated information covered by subsection (2) is given annually to the registered news business corporation for the registered news business; and
  - (b) the updated information is given in terms mentioned in paragraphs (1)(b) and (c); and
  - (c) the updated information is given to the registered news business corporation no later than 12 months after the later of the following days:
    - (i) the day on which information was given to the registered news business corporation in accordance with subsection (1);
    - (ii) the most recent day on which updated information was previously given to the registered news business corporation in accordance with this subsection; and
  - (d) if regulations made for the purposes of this paragraph specify other requirements for the updated information—those requirements are satisfied.
- (5) To avoid doubt, nothing in this section requires the responsible digital platform corporation to give the data covered by subsection (3) to the registered news business corporation.

**52S Change to algorithm to bring about identified alteration to distribution of content with significant effect on referral traffic**

- (1) Subsection (2) applies if:
    - (a) a change is planned to be made to an algorithm of the designated digital platform service; and
    - (b) the dominant purpose of the change is to bring about an identified alteration to the ways in which the designated digital platform service distributes content that is made available by the service; and
    - (c) the change is likely to have a significant effect on the referral traffic from the designated digital platform service to the covered news content of registered news businesses (considered as a whole) that the service makes available.
  - (2) The responsible digital platform corporation for the designated digital platform service must ensure that:
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- (a) notice of the change is given to the registered news business corporation for each registered news business; and
  - (b) the notice is given:
    - (i) unless subparagraph (ii) applies—at least 14 days before the change is made; or
    - (ii) if the change relates to a matter of urgent public interest—no later than 48 hours after the change is made; and
  - (c) the notice describes the change, and the effect mentioned in paragraph (1)(c), in terms that are readily comprehensible; and
  - (d) if there are other designated digital platform services of the responsible digital platform corporation—the notice is given in terms that relate specifically to the designated digital platform service (and not in terms that relate to that service and those other designated digital platform services in aggregate).
- (3) However, subsection (2) does not apply if the change is made within 14 days after the day on which the registered news business corporation was registered under section 52G.

#### **52V Section 52S—dominant purpose**

For the purposes of paragraph 52S(1)(b), treat a change as *not* having the dominant purpose mentioned in that paragraph if the change is any of the following:

- (a) a change to an algorithm made as part of routine maintenance with the dominant purpose of ensuring the ongoing effectiveness of the algorithm;
- (b) a change to an algorithm with the dominant purpose of ensuring that the algorithm operates more quickly or more efficiently.

#### **52W Section 52S—significant effect**

- (1) For the purposes of paragraph 52S(1)(c), in determining whether the change is likely to have the significant effect mentioned in the paragraph, take into account the following matters:

- (a) whether, as a result of the change, there is likely to be a significant variation to the amount of covered news content made available by the designated digital platform service;
  - (b) whether, as a result of the change, there is likely to be a significant variation to the proportion of content made available by the designated digital platform service represented by covered news content;
  - (c) any other relevant matter (subject to subsection (2)).
- (2) For the purposes of paragraph 52S(1)(c), in determining whether the change is likely to have the significant effect mentioned in the paragraph, disregard the following matters:
- (a) whether, as a result of the change, there is likely to be a significant variation to the proportion of covered news content of all registered news businesses made available by the designated digital platform service represented by the covered news content of a particular registered news business;
  - (b) the relative turnover of registered news businesses whose covered news content is made available by the designated digital platform service;
  - (c) the relative volume of covered news content created by registered news businesses whose covered news content is made available by the designated digital platform service;
  - (d) the relative financial position of registered news businesses whose covered news content is made available by the designated digital platform service.

### **Subdivision C—Recognition of original covered news content**

#### **52X Recognition of original covered news content**

The responsible digital platform corporation for the designated digital platform service must ensure that:

- (a) a proposal is developed for the designated digital platform service to recognise original covered news content when it makes available and distributes that content; and
- (b) registered news business corporations are consulted in developing that proposal before it is published; and



- (c) the proposal is published no later than 6 months after the first registration of a news business under section 52G.

### **Subdivision D—Facilitating open communication**

#### **52Y Facilitating open communication—responsible digital platform corporation for designated digital platform service**

The responsible digital platform corporation for a designated digital platform service must:

- (a) set up a point of contact in Australia for the purpose of this section no later than 28 days after the Minister makes a determination under section 52E specifying the designated digital platform corporation; and
- (b) if regulations made for the purposes of this paragraph specify requirements for the point of contact—ensure that the point of contact meets those requirements; and
- (c) give details of that point of contact to every registered news business corporation:
  - (i) unless subparagraph (ii) applies—no later than 10 business days after the responsible digital platform corporation sets up the point of contact; or
  - (ii) if the registered news business corporation is registered under section 52G after the responsible digital platform corporation sets up the point of contact—no later than 10 business days after the registered news business corporation is registered under section 52G; and
- (d) acknowledge every communication to that point of contact from a registered news business corporation for a registered news business that relates to the registered news business' covered news content made available by the designated digital platform service; and
- (e) if regulations made for the purposes of this paragraph specify requirements for the acknowledgement—ensure that the acknowledgement meets those requirements.

**52Z Facilitating open communication—registered news business corporation for registered news business**

A registered news business corporation for a registered news business must:

- (a) set up a point of contact for the purpose of this section no later than the day on which the registered news business corporation is registered under section 52G; and
- (b) if regulations made for the purposes of this paragraph specify requirements for the point of contact—ensure that the point of contact meets those requirements; and
- (c) acknowledge every communication to that point of contact from a responsible digital platform corporation for a designated digital platform service that relates to the registered news business' covered news content made available by that designated digital platform service; and
- (d) if regulations made for the purposes of this paragraph specify requirements for the acknowledgement—ensure that the acknowledgement meets those requirements.

**Subdivision E—Trade secrets and personal information**

**52ZA Trade secrets**

Nothing in this Division requires the giving of information the disclosure of which would reveal a trade secret.

**52ZB Personal information**

Nothing in this Division requires or authorises the giving of information that is personal information (within the meaning of the *Privacy Act 1988*).

**Division 5—Non-differentiation**

**52ZC Digital service to be supplied without differentiating in relation to registered news businesses**

- (1) This section applies if a responsible digital platform corporation for a designated digital platform service, either by itself or together

with other corporations, operates or controls a digital service (whether or not the designated digital platform service).

- (2) The responsible digital platform corporation must ensure that the supply of the digital service does not, in relation to crawling, indexing, making available and distributing news businesses' covered news content:
- (a) differentiate between registered news businesses, because of any of the following matters:
    - (ia) a corporation being registered under section 52G, or being endorsed under that section as the registered news business corporation for a news business;
    - (i) a bargaining news business representative for a registered news business making a notification under 52ZE(1), or not making such a notification;
    - (ii) a bargaining news business representative for a registered news business giving a notice under 52ZL(2), or not giving such a notice;
    - (iii) a registered news business being paid, or not being paid, an amount of remuneration for the making available of the registered news business' covered news content by a designated digital platform service (whether or not the remuneration is paid in accordance with a determination of a panel under section 52ZX));
    - (iv) a registered news business being the subject of, or not being the subject of, an agreement of a kind described in section 52ZZK or 52ZZL;
    - (v) a registered news business being the subject of, or not being the subject of, an agreement resulting from the acceptance of an offer of a kind described in section 52ZZM; or
  - (b) differentiate between registered news businesses and news businesses that are not registered news businesses, because of any of the following matters:
    - (i) a matter mentioned in subparagraph (a)(ia), (i), (ii), (iii), (iv) or (v);
    - (ii) a news business covered by subsection (3) being paid, or not being paid, an amount of remuneration for the

- making available of the news business' covered news content by a designated digital platform service;
- (iii) a news business covered by subsection (3) being the subject of, or not being the subject of, an agreement of a kind described in section 52ZZK or 52ZZL;
  - (iv) a news business covered by subsection (3) being the subject of, or not being the subject of, an agreement resulting from the acceptance of an offer of a kind described in section 52ZZM; or
- (c) differentiate between news businesses that are not registered news businesses, because of any of the following matters:
- (i) a corporation being eligible to be registered under section 52G, or being eligible to be endorsed under that section as the registered news business corporation for a news business;
  - (ii) a corporation applying under section 52F for registration of itself, or of a news business, or for endorsement of itself as the registered news business corporation for a news business.
- (3) This subsection covers a news business if:
- (a) the news business is not a registered news businesses; and
  - (b) none of the news sources that comprise the business form part of a registered news business.
- (4) Subsection (2) does not apply in relation to differentiation if:
- (a) there is an agreement between:
    - (i) the responsible digital platform corporation, or a related body corporate of the responsible digital platform corporation; and
    - (ii) a corporation that is registered (or is eligible to be registered) under section 52G and, either by itself or together with other corporations, operates or controls a news business; and
  - (b) the agreement provides that a corporation mentioned in subparagraph (a)(i) will ensure that remuneration is to be paid to the news business for the making available of the news business' covered news content by the digital service; and
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- (c) the differentiation arises solely from the amount of that remuneration.
- (5) Subsection (2) does not apply in relation to differentiation if:
  - (a) there is an agreement between:
    - (i) the responsible digital platform corporation, or a related body corporate of the responsible digital platform corporation; and
    - (ii) a corporation that is registered (or is eligible to be registered) under section 52G and, either by itself or together with other corporations, operates or controls a news business; and
  - (b) the agreement provides that:
    - (i) a corporation mentioned in subparagraph (a)(ii) will ensure the provision of a specified type of covered news content to be made available by the digital service; and
    - (ii) a corporation mentioned in subparagraph (a)(i) will ensure that the content is ranked preferentially when the digital service distributes the covered news content; and
  - (c) the differentiation arises solely from that preferential ranking.
- (6) For the purposes of this section:
  - (a) treat the reference in the definition of *news source* in section 52A to “it produces” as instead being a reference to “it regularly produces”; and
  - (b) treat the reference in that definition to “news content” as instead being a reference to “covered news content”.

## **Division 6—Bargaining**

### **Subdivision A—Preliminary**

#### **52ZD Bargaining news business representative for a registered news business**

- (1) The registered news business corporation for a registered news business is the *bargaining news business representative* for the registered news business.
  - (2) Subsection (3) applies if:
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- (a) a registered news business corporation for a registered news business makes an agreement in writing with a person; and
  - (b) the agreement provides that the person should be the bargaining news business representative for the registered news business.
- (3) Despite subsection (1), the person is the ***bargaining news business representative*** for the registered news business.
- (4) To avoid doubt, a person can be the bargaining news business representative for 2 or more registered news businesses.

### **52ZE Notification of bargaining**

- (1) The bargaining news business representative for a registered news business may notify a responsible digital platform corporation for a designated digital platform service that it wishes to bargain over one or more specified issues relating to the registered news business' covered news content made available by the designated digital platform service.
- (2) If the bargaining news business representative is the bargaining news business representative for 2 or more registered news businesses, a notification made for the purposes of subsection (1) may relate to some or all of those registered news businesses.
- (3) If the responsible digital platform corporation is the responsible digital platform corporation for 2 or more designated digital platform services:
- (a) a notification made for the purposes of subsection (1) may relate to some or all of those designated digital platform services; and
  - (b) where the notification relates to more than one designated digital platform service—treat references in this Division and in Division 7 to the designated digital platform service as including references to each of the designated digital platform services to which the notification relates.
- (4) A notification made for the purposes of subsection (1) must set out the following matters:
- (a) the bargaining news business representative;

- (b) each registered news business to which the notification relates;
  - (c) the designated digital platform service;
  - (d) the responsible digital platform corporation for the designated digital platform service;
  - (e) the specified issues mentioned in subsection (1);
  - (f) if regulations made for the purposes of this paragraph specify other matters—those matters.
- (5) A notification made for the purposes of subsection (1) cannot be later varied to relate to a registered news business that was not set out in the notification.

## **Subdivision B—Bargaining obligations**

### **52ZF Application of Subdivision**

This Subdivision applies if a notification is made for the purposes of subsection 52ZE(1).

### **52ZG Bargaining parties, core bargaining issues and represented registered news businesses**

- (1) The *bargaining parties* are as follows:
- (a) the bargaining news business representative that made the notification;
  - (b) the responsible digital platform corporation for the designated digital platform service to which the notification relates.
- (2) The bargaining parties may agree, in writing, that they wish to bargain over one or more extra specified issues relating to the registered news business' covered news content made available by any of the following:
- (a) the designated digital platform service;
  - (b) specified services other than the designated digital platform service.
- (3) The *core bargaining issues* are:

- (a) the specified issues in the notification (as mentioned in paragraph 52ZE(4)(e)); and
  - (a) the specified issues in an agreement (if any) between the bargaining parties as mentioned in subsection (2).
- (4) Each registered news business to which the notification relates is a *represented registered news business*.

### **52ZH Obligation to negotiate in good faith**

Each bargaining party must negotiate in good faith over each core bargaining issue.

### **52ZI Obligation to notify Commission if agreement reached**

If the bargaining parties reach agreement over each core bargaining issue, they must ensure that a written notification of the agreement is given to the Commission as soon as practicable.

## **Subdivision BA—Mediation**

### **52ZIA Obligation to participate in mediation**

- (1) This section applies if:
  - (a) the bargaining parties have not reached agreement over each core bargaining issue within 3 months after the notification was made for the purposes of subsection 52ZE(1); or
  - (b) the bargaining parties agree to refer the core bargaining issues to mediation under this Subdivision.
- (2) Each bargaining party must participate in a mediation about the core bargaining issues.
- (3) To avoid doubt, each bargaining party must comply with section 52ZH (good faith negotiations) in respect of the mediation.
- (4) The mediator is to be appointed by the ACMA.



### **52ZIB Rules about conduct of mediation**

- (1) The regulations may set out rules relating to the conduct of a mediation under this Subdivision.
- (2) A mediation under this Subdivision is to be conducted according to those rules.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (4) Without limiting the scope of regulations that may be made for the purposes of subsection (1), those regulations may:
  - (a) set out rules relating to the payment of the costs of the mediator; and
  - (b) without limiting the scope of paragraph (a), specify who is to pay those costs.

### **52ZIC Termination of mediation**

- (1) A mediation under this Subdivision terminates if:
  - (a) unless paragraph (b) applies—2 months have passed since the start of the mediation; or
  - (b) if the bargaining parties agree to a 2-month extension of the mediation—4 months have passed since the start of the mediation; or
  - (c) the mediator decides to terminate the mediation in accordance with subsections (3) and (4); or
  - (d) the bargaining parties agree to terminate the mediation.
- (2) To avoid doubt, the bargaining parties can only agree to one extension in accordance with paragraph (1)(b).
- (3) The mediator may decide to terminate the mediation if, having regard to the conduct of the bargaining parties in the mediation, the mediator considers that there are no reasonable prospects of the bargaining parties reaching agreement over each core bargaining issue.

- (4) The mediator may decide to terminate the mediation whether or not a bargaining party has asked the mediator to do so.

### **Subdivision C—Miscellaneous**

#### **52ZJ Bargaining over other issues**

To avoid doubt, nothing in this Division limits the bargaining parties to negotiating only over the core bargaining issues.

### **Division 7—Arbitration about remuneration issue**

#### **Subdivision A—Preliminary**

##### **52ZK Register of bargaining code arbitrators**

- (1) The ACMA must establish and keep a register of bargaining code arbitrators.
- (2) Each such person listed on the register must be:
  - (a) a person experienced in legal matters, economic matters or industry matters; or
  - (b) a person who the ACMA considers has appropriate experience to be a member of an arbitral panel for the purposes of this Part.
- (3) In listing a person on the register, the ACMA must consider requirements (if any) specified in regulations made for the purposes of this subsection.

#### **Subdivision B—Starting arbitration**

##### **52ZL Notification of arbitration**

- (1) This section applies if:
    - (a) a notification has been made for the purposes of subsection 52ZE(1) to a responsible digital platform corporation for a designated digital platform service; and
    - (b) one of the core bargaining issues (the *remuneration issue*) concerns the remuneration to be paid to a registered news
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business for the making available of the registered news business' covered news content by the designated digital platform service.

- (2) The bargaining party that is the bargaining news business representative may give a notice to the Commission that arbitration about the remuneration issue should start, if:
  - (a) both of the following conditions are satisfied:
    - (i) mediation in respect of the core bargaining issues has terminated in accordance with section 52ZIC;
    - (ii) the bargaining parties had not reached an agreement about terms for resolving the remuneration issue before the mediation terminated; or
  - (b) the bargaining parties have agreed to arbitration about terms for resolving the remuneration issue no earlier than 10 business days after the notification referred to in paragraph (1)(a) was made.
- (3) The notice must:
  - (a) be in writing; and
  - (b) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.
- (4) However, the bargaining party that is the bargaining news business representative cannot give a notice under subsection (2) at a time if, within the period of 24 months ending at that time, a notice has been given under subsection (2) in respect of:
  - (a) the designated digital platform service mentioned in paragraph (1)(a); and
  - (b) the registered news business mentioned in paragraph (1)(b).
- (5) As soon as practicable after the Commission has been given a notice under subsection (2), it must give the ACMA and each of the bargaining parties a notice stating that:
  - (a) an arbitral panel is to be formed; and
  - (b) the members of the panel are to be appointed in accordance with section 52ZM.

**52ZM Formation of arbitral panel**

- (1) This section applies if a notice has been given under subsection 52ZL(5).
  - (2) An arbitral panel is to be formed to arbitrate about the remuneration issue.
  - (3) The membership of the panel is to be comprised of:
    - (a) the Chair; and
    - (b) unless the bargaining parties agree that the sole member of the panel is the Chair—2 other members.
  - (4) The members of the panel are to be appointed by agreement between the bargaining parties.
  - (5) The bargaining parties may agree to appoint persons who are, or are not, listed on the register of bargaining code arbitrators.
  - (6) If the bargaining parties agree on the appointment of one or more of the members, each of the bargaining parties must give the Commission and the ACMA a notice that:
    - (a) specifies:
      - (i) the name (or names) of the person (or persons) appointed; and
      - (ii) the date of the agreement; and
    - (b) if regulations made for the purposes of this paragraph specify other information—that information.
  - (7) For the purposes of subsection (6), the notice must be given no later than the end of:
    - (a) the period of 10 business days after the notice was given under subsection 52ZL(5); or
    - (b) if regulations made for the purposes of this paragraph specify a different period—that period.
  - (8) If the bargaining parties cannot agree on the appointment of one or more of the members within that period, the ACMA must make that appointment or those appointments.
  - (9) The ACMA may only make an appointment of a person who is listed on the register of bargaining code arbitrators.
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**52ZN Disclosure of conflicts of interest where ACMA appoints member of panel**

- (1) Before the ACMA appoints a person to be a member of the panel, the ACMA must give the person a reasonable opportunity to declare actual or potential conflicts of interest in accordance with subsection (2).
- (2) Before a person accepts appointment as a member of the panel, the person must declare to the ACMA any actual or potential conflict of interest in relation to the arbitration.
- (3) If the ACMA has reason to consider that a person who has been appointed as a member of the panel has any actual or potential conflict of interest in relation to the arbitration (regardless whether the person declared the conflict in accordance with subsection (2)):
  - (a) the ACMA may give a notice in writing to the person stating that the person should no longer be a member of the panel; and
  - (b) the person ceases to be a member of the panel when ACMA gives the person the notice.
- (4) If the ACMA gives a notice under paragraph (3)(a), the ACMA must, as soon as practicable:
  - (a) give a copy of the notice to the bargaining parties; and
  - (b) make an appointment of another person as a member of the panel.
- (5) For the purposes of paragraph (4)(b), the ACMA may only make an appointment of a person who is listed on the register of bargaining code arbitrators.
- (6) For the purposes of this section, a person has a conflict of interest in relation to the arbitration if the person has any interest, pecuniary or otherwise, that could conflict with the proper performance of the person's functions in relation to the arbitration.

**52ZO Costs of arbitral panel**

- (1) The bargaining parties must each pay half of the costs of each member of the panel.

- (2) Each member of the panel is to determine that member's costs, worked out as daily costs.
- (3) If regulations made for the purposes of this subsection specify rules relating to those costs (including the amount of those costs), the bargaining parties must comply with those rules.

**52ZP Chair to notify start of arbitration**

- (1) The Chair must notify the bargaining parties that arbitration about terms for resolving the remuneration issue will start on a specified day that is no later than 5 business days (or, if the regulations specify a different period, the end of that period) after the appointment of the Chair.
- (2) The notice must:
  - (a) be in writing; and
  - (b) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.

**52ZQ Bargaining parties' agreement about dealing with extra services in arbitration**

- (1) The bargaining parties may agree, in writing, that specified services other than the designated digital platform service should be dealt with in the arbitration.
  - (2) If the bargaining parties notify the Chair of the agreement before the start of the arbitration, Subdivision C applies as if:
    - (a) the remuneration issue related to the designated digital platform service and the specified services mentioned in subsection (1); and
    - (b) references in that Subdivision to the designated digital platform service included references to those specified services.
  - (3) The notice must:
    - (a) be in writing; and
    - (b) if regulations made for the purposes of this paragraph specify requirements—meet those requirements.
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## **Subdivision C—Final offer arbitration**

### **52ZR Application**

This Subdivision applies if the Chair has given notice under section 52ZP.

### **52ZS Obligation to participate in arbitration in good faith**

Each bargaining party must participate in the arbitration in good faith.

### **52ZT Information request by bargaining party—general**

- (1) Each bargaining party may give the other bargaining party a request that the other bargaining party give it specified information if:
  - (a) the information is covered by subsection (2); and
  - (b) it is reasonable for the bargaining party to make the request for the purposes of this Division; and
  - (c) the request is made no later than 5 business days after the start of arbitration; and
  - (d) the bargaining party has not made a previous request under this subsection in respect of the arbitration.
- (2) This subsection covers information that is held by any of the following:
  - (a) if the other bargaining party is the responsible digital platform corporation:
    - (i) the responsible digital platform corporation;
    - (ii) a related body corporate of the responsible digital platform corporation; or
  - (b) if the other bargaining party is the bargaining news business representative:
    - (i) the registered news business corporation for the represented registered news business;
    - (ii) a related body corporate of the registered news business corporation for the represented registered news business.

- (3) A request under subsection (1) must:
  - (a) be made in writing; and
  - (b) set out reasons why it is reasonable for the bargaining party to make the request for the purposes of this Division; and
  - (c) if regulations made for the purposes of this paragraph specify other requirements—comply with those requirements.
- (4) The bargaining party must give a copy of the request to the panel on the same day that it gives the request to the other bargaining party.
- (5) If a bargaining party makes a request under subsection (1), the other bargaining party must ensure that:
  - (a) the request is complied with no later than 10 business days after:
    - (i) unless subparagraph (ii) applies—the request was given to the other bargaining party; or
    - (ii) if an application is made under subsection 52ZU(1)—the panel makes a ruling under subsection 52ZU(3); and
  - (b) the information requested is given in terms that are readily comprehensible; and
  - (c) if the other bargaining party is the responsible digital platform corporation and there are other designated digital platform services of the responsible digital platform corporation—the information is given in terms that relate specifically to the designated digital platform service (and not in terms that relate to that service and those other designated digital platform services in aggregate); and
  - (d) if regulations made for the purposes of this paragraph specify other requirements for that information—those requirements are satisfied.

**52ZU Information request by bargaining party—challenges by other bargaining party**

- (1) The other bargaining party may apply to the panel, in writing, for a ruling that it is *not* reasonable for the bargaining party to make the request for the purposes of this Division, in relation to all or a specified part of the information requested.
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- (2) An application under subsection (1) can be made no later than 10 business days after the bargaining party gives the request to the other bargaining party.
- (3) If an application is made under subsection (1), the panel must make a ruling in relation to it no later than 10 business days after it is made.
- (4) The ruling may relate to all or a specified part of the information requested.
- (5) In making the ruling, the panel must consider the matters mentioned in subsection 52ZZ(1).
- (6) Nothing in section 52ZT requires the giving of information to the extent (if any) that the panel makes a ruling under subsection (3) that it was *not* reasonable for the bargaining party to make the request for the purposes of this Division, in relation to all or a specified part of the information requested.

**52ZV Information request by bargaining party—miscellaneous rules**

- (1) Nothing in section 52ZT requires the giving of information the disclosure of which would reveal a trade secret.
- (2) Nothing in section 52ZT requires or authorises the giving of information that is personal information (within the meaning of the *Privacy Act 1988*).
- (3) If a bargaining party gives information to the other bargaining party in order to comply with subsection 52ZT(5), the other bargaining party must ensure that the information is not used for a purpose other than a purpose in relation to arbitration under this Division.
- (4) Subsection (5) applies if:
  - (a) there is a reference to a number of business days in a provision in section 52ZT or 52ZU; and
  - (b) regulations made for the purposes of this paragraph specify a different number of business days in respect of that provision.

- (5) Treat that reference in the provision as being to the number of business days specified in the regulations as mentioned in paragraph (4)(b).

### **52ZW Agreed early termination of arbitration**

- (1) This section applies if:
- (a) the bargaining parties agree that the arbitration should terminate; and
  - (b) the panel did not make a determination in accordance with subsection 52ZX(1) before the agreement was made; and
  - (c) no information was given by a bargaining party in order to comply with a request made under subsection 52ZT(1) before the agreement was made.
- (2) The parties must notify the Chair of the agreement as soon as practicable after the day on which the agreement is made.
- (3) The arbitration terminates in accordance with that agreement, but no earlier than the day on which parties notify the Chair of the agreement in accordance with subsection (2).
- (4) However, if the parties fail to comply with subsection (2):
- (a) subsection (3) does not apply; and
  - (b) the agreement does not affect the validity of the arbitration or any aspect of the arbitration.

### **52ZX Final offer arbitration**

- (1) The panel is to make a determination under this subsection about the terms for resolving the remuneration issue that:
- (a) is in accordance with subsections (7), (8) and (9) (final offer arbitration); and
  - (b) sets out a lump sum amount (the **remuneration amount**) for remunerating the registered news business for the making available of the registered news business' covered news content by the designated digital platform service for 2 years; and
  - (c) is consistent with rights under contracts that are in force between:
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- (i) the responsible digital platform corporation or a related body corporate of the responsible digital platform corporation; and
  - (ii) the registered news business corporation for the represented registered news business or a related body corporate of that registered news business corporation.
- (2) Each of the bargaining parties must:
  - (a) submit to the panel a final offer for what the remuneration amount should be (expressed as a lump sum); and
  - (b) give a copy of the final offer to the Commission on the same day that it submits the final offer to the panel.
- (3) If a bargaining party gives a copy of the final offer to the Commission, the Commission must give a copy of the final offer to the other bargaining party as soon as practicable.
- (4) A final offer:
  - (a) cannot be submitted later than the latest of the following:
    - (i) the end of the period of 10 business days after the day on which the arbitration starts;
    - (ii) if a bargaining party makes a request under subsection 52ZT(1) (information requests)—the end of the period of 10 business days after the latest day on which the other bargaining party may comply with the request in accordance with subsection 52ZT(5);
    - (iii) if a bargaining party makes an application under subsection 52ZU(1) (challenges to information requests)—the end of the period of 10 business days after the day on which the panel makes a ruling in relation to the application under subsection 52ZU(3);
    - (iv) if regulations made for the purposes of this subparagraph specify a different period—the end of that period;
    - (v) if the panel considers that exceptional circumstances justify a different period—the end of that period; and
  - (b) cannot be more than 30 pages in length.
- (5) An offer that does not comply with subsection (4) is not a final offer for the purposes of this Division.

- (6) A final offer, once submitted, cannot be withdrawn or amended.
- (7) The panel must accept one of the final offers unless the panel considers that each final offer is not in the public interest because it is highly likely to result in serious detriment to:
  - (a) the provision of covered news content in Australia; or
  - (b) Australian consumers.
- (8) If the panel does not accept one of those final offers, it must ascertain the remuneration amount by adjusting the most reasonable of those offers in a manner that results in that offer being in the public interest.
- (9) If one bargaining party fails to submit to the panel a final offer for what the remuneration amount should be, in accordance with subsection (4), the panel must:
  - (a) accept the final offer submitted by the other bargaining party, in accordance with subsection (7); or
  - (b) ascertain the remuneration amount by adjusting the final offer submitted by the other party, in accordance with subsection (8).

**52ZXA Final offer to be accompanied by information about contracts**

- (1) If a bargaining party submits to the panel a final offer in accordance with subsection 52ZX(4), it must, on the same day that it submits the final offer to the panel, give the panel information that:
  - (a) is relevant to the arbitration; and
  - (b) relates to all contracts that are in force between:
    - (i) the responsible digital platform corporation or a related body corporate of the responsible digital platform corporation; and
    - (ii) the registered news business corporation for the represented registered news business or a related body corporate of that registered news business corporation.

- (2) Nothing in subsection (1) requires the giving of information if doing so would disclose information that is protected against disclosure by a duty of confidence.
- (3) To avoid doubt, subsection (2) does not prevent a bargaining party from giving information under subsection (1) if the other bargaining party agrees to the bargaining party doing so.

**52ZY Final offer arbitration—termination of arbitration if no final offers**

If both bargaining parties fail to submit to the panel a final offer for what the remuneration amount should be, the arbitration terminates on the day after the last day on which such a final offer could have been submitted in accordance with subsection 52ZX(4).

**52ZZ Matters to consider in arbitration, etc.**

- (1) In making a determination under subsection 52ZX(1) (including in complying with subsections 52ZX(7), (8) and (9)), the panel must consider the following matters:
  - (a) the benefit (whether monetary or otherwise) of the registered news business' covered news content to the designated digital platform service;
  - (b) the benefit (whether monetary or otherwise) to the registered news business of the designated digital platform service making available the registered news business' covered news content;
  - (c) the reasonable cost to the registered news business of producing covered news content;
  - (ca) the reasonable cost to the designated digital platform service of making available covered news content in Australia;
  - (d) whether a particular remuneration amount would place an undue burden on the commercial interests of the designated digital platform service.
- (2) In considering the matters set out in subsection (1), the panel must consider the bargaining power imbalance between Australian news businesses and the designated digital platform corporation.

### **52ZZA Other requirements for arbitration determination**

- (1) The panel must make the determination no later than 35 business days (or, if the regulations specify a different period, the end of that period) after the latest of the following days:
  - (a) the last day on which a final offer may be submitted in accordance with subsection 52ZX(4);
  - (b) the last day on which a submission may be given by a bargaining party in accordance with subsection 52ZZB(1);
  - (c) the last day on which a submission may be given by the Commission in accordance with subsection 52ZZC(1);
  - (d) the last day on which a submission may be given by a bargaining party in accordance with subsection 52ZZC(3).
- (2) If the Chair is not the sole member of the panel:
  - (a) the panel must endeavour to make the determination by unanimous decision of the members of the panel; and
  - (b) where a unanimous decision is not possible, the panel must make the determination by majority decision of the members of the panel.
- (3) The panel must, as soon as practicable, give written reasons for making the determination to the bargaining parties and the Commission.
- (4) Those written reasons must contain the information (if any) specified in regulations made for the purposes of this subsection.

### **52ZZB Submissions of bargaining parties**

- (1) Each bargaining party may give to the panel a submission about the final offer of the other bargaining party, no later than 5 business days (or, if the regulations specify a different period, the end of that period) after the panel has received both final offers (in accordance with paragraph 52ZX(2)(a)).
- (2) The submission can only deal with issues that are dealt with in any material accompanying either of the final offers.
- (3) The submission cannot be more than 20 pages in length.

- (4) If a bargaining party gives the panel a submission under subsection (1):
  - (a) the bargaining party must give a copy of the submission to the Commission on the same day that it gives the submission to the panel; and
  - (b) if the Commission is given a copy of the submission under paragraph (a), the Commission must give a copy of the submission to the other bargaining party as soon as practicable.

### **5ZZC Role of Commission**

- (1) The Commission may give to the panel a submission in relation to the arbitration, no later than 10 business days (or, if the regulations specify a different period, the end of that period) after the Commission has received both final offers (in accordance with paragraph 5ZX(2)(b)).
- (1A) The information contained in the submission must be:
  - (a) impartial factual information that relates to the relevant market; and
  - (b) impartial information that relates to relevant economic principles.
- (2) If the Commission gives the panel a submission under subsection (1), it must give the bargaining parties a copy of the submission on the same day that it gives the submission to the panel.
- (3) Each bargaining party may give to the panel a submission about the Commission's submission, no later than 5 business days after the bargaining party has received the Commission's submission.
- (4) The bargaining party's submission cannot be more than 20 pages in length.
- (5) If a bargaining party gives the panel a submission under subsection (3):
  - (a) the bargaining party must give a copy of the submission to the Commission on the same day that it gives the submission to the panel; and

- (b) if the Commission is given a copy of the submission under paragraph (a), the Commission must give a copy of the submission to the other bargaining party as soon as practicable.

**5ZZD Guidelines about conduct of arbitration**

- (1) The Commission may, in writing, make guidelines relating to the conduct of an arbitration under this Division.
- (2) However, the Commission cannot include in the guidelines a provision that relates to any of the following matters unless the Minister has approved the provision, in writing:
  - (a) how a panel makes a ruling under subsection 52ZU(3) (information requests);
  - (b) the content of final offers made by bargaining parties in accordance with subsection 52ZX(2);
  - (c) the content of submissions given by bargaining parties in accordance with subsection 52ZZB(1);
  - (d) how a panel makes a determination in accordance with subsection 52ZX(1).
- (3) A panel may take the guidelines into account in conducting an arbitration under this Division.
- (4) However:
  - (a) the panel need not take the guidelines into account in conducting the arbitration; and
  - (b) a failure by the panel to take the guidelines into account in conducting the arbitration does not affect the validity of the arbitration or any aspect of the arbitration.
- (5) The Commission must publish the guidelines on its website as soon as practicable.
- (6) General information made available by the Commission in accordance with subsection 28(1) must not relate to the conduct of an arbitration under this Division.
- (7) Guidelines made under subsection (1) are not a legislative instrument.



## **Subdivision D—Effect of arbitral determination**

### **52ZZE Bargaining parties must comply with the determination**

The bargaining parties must comply with a determination made by the panel in accordance with subsection 52ZX(1).

## **Division 8—Enforcement etc.**

### **52ZZF Record generating and keeping**

- (1) A responsible digital platform corporation for a designated digital platform service must comply with requirements specified in regulations made for the purposes of subsection (2).
- (2) The regulations may specify requirements for the generation and keeping of records relating to the operation of this Part.
- (3) Division 5 of Part IVB applies in relation to subsection (1) in the same way in which it applies in relation to an applicable industry code (within the meaning of that Part).
- (4) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

### **52ZZG Infringement notices—Division 4 of this Part**

- (1) Subject to subsection (2), Division 2A of Part IVB applies in relation to an alleged contravention of a provision of Division 4 of this Part in the same way in which it applies in relation to an alleged contravention of a civil penalty provision of an industry code (within the meaning of that Part).
- (2) For the purposes of applying Division 2A of Part IVB in accordance with subsection (1), treat the reference in paragraph 51ACF(a) to 50 penalty units as being a reference to 600 penalty units.

### **52ZZH Joint and several liability for pecuniary liabilities**

- (1) Subsection (2) applies if:
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- (a) a responsible digital platform corporation for a designated digital platform service is liable to a pecuniary penalty in accordance with section 76 because it contravened a provision of this Part; and
  - (b) the responsible digital platform corporation is not the service's designated digital platform corporation.
- (2) The responsible digital platform corporation and the service's designated digital platform corporation are jointly and severally liable for the pecuniary penalty.

## **Division 9—Agreements between digital platform corporations and registered news business corporations**

### **5ZZI Simplified outline of this Division**

Responsible digital platform corporations may make standard offers relating to remuneration for registered news business corporations. If an offer is accepted by a registered news business corporation, rules under this Part relating to bargaining and arbitration do not apply to the parties to the contract.

Responsible digital platform corporations (and related bodies corporate) may also make agreements outside this Part to disapply rules under this Part relating to bargaining, arbitration and other matters.

Responsible digital platform corporations (and related bodies corporate) may also make offers relating to such matters under this Part.

### **5ZZJ Standard offers—content**

- (1) An offer by a responsible digital platform corporation for a designated digital platform corporation complies with this subsection if:

- (a) the responsible digital platform corporation makes the offer to each registered news business corporation covered by subsection (2) (a *covered RNBC*); and
  - (b) the offer provides for the matters in subsection (3) (acceptance procedure); and
  - (c) the offer provides that a binding agreement resulting from it will have:
    - (i) the features mentioned in subsection (4) (formal matters); and
    - (ii) the features mentioned in subsection (5) (remuneration).
- (2) A registered news business corporation is covered by this subsection unless:
- (a) regulations made for the purposes of this paragraph specify a kind or kinds of registered news business corporation; and
  - (b) the registered news business corporation is not of that kind or one of those kinds.
- (3) For the purposes of paragraph (1)(b), the matters are as follows:
- (a) a covered RNBC may accept the offer before the end of the offer period;
  - (b) subject to paragraphs (c) and (d), such an acceptance becomes final, and a resulting agreement between the responsible digital platform corporation and the covered RNBC becomes binding, at the end of the offer period;
  - (c) the covered RNBC may revoke such an acceptance before the end of the offer period;
  - (d) the responsible digital platform corporation may revoke the offer before the end of the offer period.
- (4) For the purposes of subparagraph (1)(c)(i), the features of the agreement are as follows:
- (a) the agreement provides that it covers specified corporations (the *covered corporations*); and
  - (b) each covered corporation is:
    - (i) the responsible digital platform corporation; or
    - (ii) a related body corporate of the responsible digital platform corporation; or
    - (iii) the registered news business corporation; or

- (iv) a related body corporate of the registered news business corporation; and
  - (c) the agreement specifies a 2 year period (the *covered period*) during which it is in force; and
  - (d) the agreement specifies one or more designated digital platform services or other services (the *covered services*) of the designated digital platform corporation; and
  - (e) the agreement expressly provides that some or all provisions mentioned in subsection 52ZZK(4) (the *specified provisions*) are not to apply to the extent that they would impose an obligation on one covered corporation in respect of another covered corporation in relation to the covered services.
- (5) For the purposes of subparagraph (1)(c)(ii), the features of the agreement are as follows:
- (a) the agreement specifies that the responsible digital platform corporation will ensure the payment of remuneration to the covered RNBC (or a related body corporate of the covered RNBC) for the making available of the registered news business' covered news content by one or more of the covered services, in respect of the covered period; and
  - (b) if regulations made for the purposes of this paragraph specify other features—those features.
- (6) Regulations made for the purposes of paragraph (5)(b) may specify features relating to the amount of the remuneration mentioned in paragraph (5)(a) (including features that require the determination of that remuneration to be based on specified factors).
- (7) Subsection (6) does not limit the scope of regulations that may be made for the purposes of paragraph (5)(b).
- (8) The *offer period* is the period that:
- (a) starts when the responsible digital platform corporation gives a copy of the offer to a covered RNBC; and
  - (b) ends:
    - (i) unless subparagraph (ii) applies—60 days after the period starts; or
    - (ii) if regulations made for the purposes of this subparagraph specify a different day—on that day.

- (9) To avoid doubt, this section does not prevent the making of other kinds of offers or agreements.

**52ZZK Standard offers—consequences of agreement**

- (1) Subsection (2) applies if:
- (a) a responsible digital platform corporation for a designated digital platform corporation makes an offer to make a binding agreement; and
  - (b) the offer complies with subsection 52ZZJ(1); and
  - (c) the responsible digital platform corporation has given a copy of the offer to all registered news business corporations covered by subsection 52ZZJ(2); and
  - (d) a registered news business corporation for a registered news business has accepted the offer, and the resulting agreement has become binding on the responsible digital platform corporation and the registered news business corporation; and
  - (e) the parties to the agreement notify the Commission, in writing, that the agreement has become binding.
- (2) The specified provisions do not apply to the extent that (disregarding this subsection) they impose an obligation on one covered corporation in respect of another covered corporation in relation to the covered services that are designated digital platform services.
- (3) However, subsection (2) does not apply if, before the agreement became binding, a notification has been made for the purposes of subsection 52ZE(1) to the responsible digital platform corporation, in relation to the registered news business.
- (4) The provisions are as follows:
- (a) Division 6 (bargaining);
  - (b) Division 7 (arbitration about remuneration issue).

**52ZZL Contracting out of general requirements, bargaining and arbitration**

- (1) Subsection (2) applies if:
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- (a) a responsible digital platform corporation for a designated digital platform corporation (or a related body corporate of such a responsible digital platform corporation) makes a binding agreement with another corporation (the **news business corporation**); and
  - (b) the agreement provides that it covers specified corporations (the **covered corporations**); and
  - (c) each covered corporation is:
    - (i) the responsible digital platform corporation; or
    - (ii) a related body corporate of the responsible digital platform corporation; or
    - (iii) the news business corporation; or
    - (iv) a related body corporate of the news business corporation; and
  - (d) the agreement specifies the period (the **covered period**) during which it is in force; and
  - (e) the agreement specifies one or more designated digital platform services or other services (the **covered services**) of the designated digital platform corporation; and
  - (f) the agreement expressly provides that some or all provisions mentioned in subsection (4) (the **specified provisions**) are not to apply to the extent that they would impose an obligation on one covered corporation in respect of another covered corporation in relation to the covered services; and
  - (g) the parties to the agreement notify the Commission, in writing, that the agreement has been made.
- (2) The specified provisions do not apply to the extent that (disregarding this subsection) they impose an obligation on one covered corporation in respect of another covered corporation in relation to the covered services that are designated digital platform services.
- (3) However, subsection (2) does not apply if:
- (a) an arbitration under Division 7 started in relation to any of the covered services in respect of the payment of remuneration, for a period starting or ending in the covered period, to the news business corporation (or a related body corporate of the news business corporation); and

- (b) before the agreement was made:
  - (i) the panel made a determination in accordance with subsection 52ZX(1); or
  - (ii) a bargaining party gave information in order to comply with a request made under subsection 52ZT(1).
- (4) The provisions are as follows:
  - (a) Division 4 (general requirements);
  - (b) Division 6 (bargaining);
  - (c) Division 7 (arbitration about remuneration issue).

**52ZZM Offers relating to general requirements, bargaining and arbitration not prohibited**

- (1) To avoid doubt, nothing in this Part prevents a responsible digital platform corporation for a designated digital platform corporation (or a related body corporate of such a responsible digital platform corporation) from making an offer, to corporations covered by subsection (2) in general, to make an agreement of a kind described in paragraphs 52ZZL(1)(a) to (f).
- (2) This subsection covers a corporation that, either by itself or together with other corporations, operates or controls a news business.
- (3) To avoid doubt:
  - (a) the offer may provide that it is not subject to further negotiations; and
  - (b) this section does not prevent the making of other kinds of offer.

## **Division 10—Powers and functions of the ACMA in relation to this Part**

### **52ZZN Powers of the ACMA to obtain information etc.**

#### *Application of Broadcasting Services Act 1992*

- (1) Subject to this Division, Parts 13 and 14B of the *Broadcasting Services Act 1992*, and any other provisions of that Act to the extent that they relate to either of those Parts, apply as if:
  - (a) a reference in Part 13 of the *Broadcasting Services Act 1992* to the ACMA’s broadcasting, content and datacasting functions included a reference to the powers and functions of the ACMA under Part IVBA of this Act; and
  - (b) the references in paragraphs 168(2)(b) and 187(2)(b) of that Act to the “due administration of this Act” included a reference to the due administration of Part IVBA of this Act.

Note: Part 13 of the *Broadcasting Services Act 1992* deals with information-gathering by the ACMA, and Part 14B of that Act deals with civil penalties.

#### *Offences and civil penalty provisions*

- (2) For the purposes of applying the *Broadcasting Services Act 1992* in relation to this Part in accordance with subsection (1):
  - (a) omit the penalty in section 201 of that Act and instead treat that section as if it were a civil penalty provision for the purposes of that Act; and
  - (b) disregard subsections 202(1) and (2) of that Act; and
  - (c) disregard subsections 205F(4) and (5) of that Act; and
  - (d) treat the maximum penalty for a contravention of a civil penalty provision of Part 13 or 14B of that Act (including a contravention of a provision that is treated as a civil penalty provision because of this section) as being 600 penalty units.



**52ZZO No Ministerial directions to the ACMA in relation to this Part**

- (1) Section 14 of the *Australian Communications and Media Authority Act 2005* does not apply in relation to the performance of the ACMA's functions, or the exercise of the ACMA's powers, under:
  - (a) this Part; or
  - (b) Part 13 of the *Broadcasting Services Act 1992*, as it applies in relation to this Part because 52ZZN of this Act.
- (2) Subsection (3) applies for the purposes of applying Part 13 (the **applied Part**) of the *Broadcasting Services Act 1992* in relation to this Part in accordance with section 52ZZN of this Act.
- (3) Disregard any provision in the applied Part to extent that the provision allows the Minister (within the meaning of the provision) to give a direction to the ACMA that relates to the performance of the ACMA's functions, or the exercise of the ACMA's powers, under this Part.

**Division 11—Miscellaneous**

**52ZZP Exceptions to Part IV**

For the purposes of subsection 51(1), an arrangement between 2 or more registered news business corporations is specified and specifically authorised if it is an arrangement for the purposes of negotiating, under or in relation to this Part, with a responsible digital platform corporation in relation to covered news content.

**52ZZQ Concurrent operation of State and Territory laws**

It is the Parliament's intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

**52ZZR Giving information and producing documents by electronic means**

Paragraphs 9(1)(d) and (2)(d) and 11(1)(e) and (2)(e) of the *Electronic Transactions Act 1999* do not apply to a requirement, or

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permission, under this Part to give information in writing or produce a document.

Note: Those paragraphs of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information or documents to the information being given, or the documents being produced, by way of electronic communication.

### **52ZZS Review of operation of this Part**

- (1) Within the period of 12 months after the commencement of this Part, the Minister must cause a review of the operation of the Part to be commenced.
- (2) The review must be completed no later than 12 months after the commencement of the review.
- (3) A written report of the review must be given to the Minister and the Communications Minister (within the meaning of the *National Broadband Network Companies Act 2011*).
- (4) The Minister must ensure that copies of the report are available for public inspection as soon as practicable after the period of 28 days beginning on the day the report is given to the Minister.

## **Part 2—Other amendments**

### ***Competition and Consumer Act 2010***

#### **2 After paragraph 2B(1)(a)**

Insert:

(aaa) Part IVBA;

#### **3 After paragraph 5(1)(a)**

Insert:

(aa) Part IVBA;

#### **4 Paragraph 5(1)(f)**

After “(a),”, insert “(aa),”.

#### **5 Paragraph 29(1A)(a)**

After “IV,”, insert “IVBA,”.

#### **6 Subsection 75B(1)**

Omit “or IVB”, substitute “, IVB or IVBA”.

#### **7 After subparagraph 76(1)(a)(i)**

Insert:

(iaa) a provision of Part IVBA specified in subsection (4A);

#### **8 Paragraph 76(1A)(b)**

After “or that relates to”, insert “section 52ZC, 52ZH, 52ZS or 52ZZE,”.

#### **9 After paragraph 76(1A)(b)**

Insert:

(baa) for each act or omission to which this section applies that relates to a provision of Division 4 of Part IVBA—6000 penalty units;

- (bab) for each act or omission to which this section applies that relates to section 52J or 52ZI or subsection 52ZT(5), 52ZV(3) or 52ZZF(1)—600 penalty units;

**10 After subsection 76(4)**

Insert:

*Specified provisions of Part IVBA*

- (4A) For the purposes of subparagraph 76(1)(a)(iaa), the following provisions of Part IVBA are specified:
- (a) section 52J;
  - (b) section 52ZI;
  - (c) a provision of Division 4 of Part IVBA;
  - (d) section 52ZC;
  - (e) section 52ZH;
  - (f) section 52ZS;
  - (g) subsection 52ZT(5);
  - (h) subsection 52ZV(3);
  - (i) section 52ZZE;
  - (j) subsection 52ZZF(1).

**11 After subparagraph 80(1)(a)(ii)**

Insert:

- (iiaa) a provision of Part IVBA;

**12 Paragraph 82(1)(a)**

Omit “or IVB”, substitute “, IVB or IVBA”.

**13 Subparagraph 83(1)(b)(i)**

Omit “or IVB”, substitute “, IVB or IVBA”.

**14 Paragraphs 84(1)(b) and (3)(b)**

After “Part IVB”, insert “or IVBA”.

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**15 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)**

Omit “or IVB”, substitute “, IVB or IVBA”.

**16 Subsection 87(1)**

Omit “or Division 2 of Part IVB”, substitute “, Division 2 of Part IVB, or Part IVBA”.

**17 Paragraphs 87(1A)(a) and (b)**

After “Division 2 of Part IVB,”, insert “Part IVBA,”.

**18 Subsection 87(1C)**

After “Division 2 of Part IVB,”, insert “Part IVBA,”.

**19 After subparagraph 155(2)(b)(ia)**

Insert:

- (ib) a designated digital platform matter (as defined by subsection (9AB) of this section); or

**20 After subsection 155(9AA)**

Insert:

(9AB) A reference in this section to a *designated digital platform matter* is a reference to the performance of a function, or the exercise of a power, conferred on the Commission by or under:

- (a) Part IVBA; or
- (b) regulations made under this Act for the purposes of that Part.

**21 Subsection 155AAA(21) (paragraph (a) of the definition of *core statutory provision*)**

After “Part IV,”, insert “IVBA,”.

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*[Minister's second reading speech made in—  
House of Representatives on 9 December 2020  
Senate on 22 February 2021]*

(177/20)

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*Treasury Laws Amendment (News Media and Digital Platforms  
Mandatory Bargaining Code) Act 2021*

*No. 21, 2021*