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Submission to the News Bargaining Incentive

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Executive Summary

The review of the News Media Bargaining Incentive by The Treasury is timely and important. Since the implementation of the News Media Bargaining Code in 2021, it is estimated to have contributed about \$250 million annually to the sustainability of Australian news publishing, across print, broadcast and online media. At a time when news organizations globally are under great financial pressure arising from the migration of advertising to digital platforms and social media, this funding has been vital in enabling journalism to play its roles in democratic societies of informing citizens, promoting civic dialogue and participation, and enabling greater collective understanding of complex issues in challenging times.

Major changes since 2021 that necessitate a review include:

- The growing significance of artificial intelligence as a source of news and information, and the rise of AI platform companies including OpenAI, Anthropic, Tesla and Microsoft, as well as Google and Meta.
- The relationship between the News Media Bargaining Incentive and the News Media Assistance Program (NewsMAP), with the latter intended to guide government intervention to support public interest journalism and media diversity in Australia, through a range of measures including a focus on the sustainability of independent and regional news businesses.
- The Australia-US Free Trade Agreement (AUSFTA), and the question of whether a Digital Advertising Levy that can apply to all digital platforms funded through advertising avoids any issues around the non-discrimination clause of AUSFTA.
- The question of whether particular digital platforms are engaged in the distribution of professionally produced news, particularly as AI-driven online search challenges the traditional reliance upon search engines.

In this submission, we have responded to a selected set of questions outlined in the Treasury Consultation Paper. Our main recommendations are:

1. Considerations should be given to extending the Incentive to apply to major generative AI platforms and not simply restricted to social media and search services.
2. Gross annual Australian revenue collected (including GST) should be the basis on which the significance of a digital platform is determined.
3. The charge base of total gross revenue generated in Australia (including GST), aggregated across a company as a whole should provide the basis for determining inclusion in the Incentive.
4. Consideration should be given to enabling smaller publishers to undertake collective bargaining arrangements for the purposes of engagement with the Incentive process, in order to address concerns about the exclusion of these news publishers from the News Media Bargaining Code,
5. There should be strengthened reporting requirements around both the funding received by news publishers through the Incentive, and the uses of such funding, to strengthen accountability, transparency and public confidence in the Incentive.

A more detailed account of the analysis that underpins our recommendations can be found in T. Flew, A. Stepnik and T. Koskie (eds.), *Valuing News: Digital Platforms and Journalism Futures* (Palgrave Macmillan, 2026). This book arises out of a three-year Australian Research Council project, *Valuing News: Aligning Individual, Institutional and Societal Perspectives* (DP220100589).

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Response to Consultation Paper questions

Q1: How do you think “social media” and “search services” should be defined for the purposes of the incentive? Do you anticipate that a process for confirming the application of these definitions will be needed, and if so, what form should it take?

The proposed scope limited to “social media” and “search services” is insufficient given the rapidly evolving digital landscape. The incentive should extend to all services that systematically use Australian news content as an input, regardless of the service categorisation.

Recent research examining the performance of six major AI chatbots demonstrates that leading platforms including paid versions of Perplexity, Gemini, and Claude demonstrate sophisticated capacity to access, synthesise, and repurpose content from Australian news sources.¹ These services ingest material from mainstream publishers, investigative journalism outlets, specialist publications, and academic research to provide comprehensive responses to queries about Australian legal proceedings, telecommunications policy, and political reporting.

The systematic use of news content extends beyond traditional search and social media services to encompass generative AI systems, large language model applications, and other emerging technologies. These platforms derive significant value from news content both in model training and in real-time retrieval to answer user queries. The current narrow definition would permit these services to avoid contributing to the sustainability of journalism despite their extensive reliance on news media output.

Rather than attempting to define specific service types, the incentive should apply to any digital platform service that derives substantial benefit from Australian news content. This could be operationalised through a functional test examining whether news content forms a material input to the service’s value proposition. A confirmation process administered through the Australian Taxation Office would provide certainty. Platforms could seek advance rulings on their liability status using existing private ruling mechanisms, ensuring administrative efficiency whilst maintaining flexibility to capture future market developments.

Q2: Is a gross annual Australian market revenue threshold appropriate for determining whether a platform is “large”, or should a different measure be used?

Gross annual Australian revenue collected through GST provides an appropriate threshold measure. However, the threshold should be calculated on GST collected rather than revenue exclusive of GST. This approach leverages existing ATO reporting infrastructure and provides clear, verifiable data. For services primarily deriving revenue from users rather than advertising, such as AI chatbot subscriptions, user revenue would form the relevant base. For advertising-funded services, advertising revenue would apply.

Q3: If gross annual Australian market revenue is the appropriate threshold, what level of revenue should it be set at?

¹ The material discussed can be made available to Treasury on request.
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A threshold of approximately \$250 million in GST collections provides an appropriate balance. This level captures significant platforms whilst avoiding undue burden on smaller operations. The GST-based calculation simplifies determination of liability using data already reported to the ATO through quarterly Business Activity Statements.

Q4: What criteria should be used to determine the “significance” of a social media or search service in Australia?

Revenue collected through GST provides a sufficient criterion for determining significance. Platforms exceeding the threshold demonstrate material market presence and benefit sufficiently from the Australian news ecosystem to justify contribution obligations. Additional complexity through market share analysis or user base metrics would increase administrative burden without materially improving targeting.

Q5: What sources of data are best used to assess the size of companies and significance of their services?

The Australian Taxation Office holds comprehensive, verified data on GST collections through mandatory quarterly reporting. This existing administrative infrastructure provides reliable, auditable information for determining both threshold application and ongoing liability calculations. Reliance on ATO data eliminates the need for separate reporting mechanisms and reduces compliance costs for both platforms and government.

Q6: What administrative costs are likely to be incurred by platforms that are potentially in scope?

Integration with existing GST reporting through quarterly BAS lodgement would minimise administrative costs. Platforms already calculate and report GST collections quarterly. Determining incentive liability as part of this established process would involve minimal additional compliance burden. The main cost would involve systems modifications to track eligible expenditure on news content deals for offset calculations.

Q7: When should the incentive commence?

The incentive should commence on 1 July 2026. This provides adequate lead time for platforms to negotiate commercial arrangements with news organisations, establish necessary internal systems, and adjust business models. It also aligns with the standard financial year framework used for tax administration, facilitating integration with existing ATO processes.

Q8: Which of the two proposed options for the charge base is most appropriate for the incentive? Is there another option that would be effective and minimise the compliance burden?

We support the **first option** of setting the charge base as total gross revenue generated in Australia (including GST), aggregated across a company as a whole. The incentive liability would reflect the size of the overall entity, and it relatively simple to administer, reducing the compliance burden on in-scope entities.

One argument for the **second option** of basing the charge base on digital advertising revenue is that it avoids any concerns about non-discrimination under the Australia-US Free Trade Agreement (AUSFTA). According to the Global Media and Internet Concentration Project’s report *Communications, media and internet* Centre for AI, Trust and Governance

concentration in Australia, 2019-2022 (Flew et al., 2024), Alphabet and Meta accounted for 72% of digital advertising revenue in Australia in 2022. A charge base derived from digital advertising revenue would primarily engage these companies but would nonetheless also include significant Australian companies such as Seek, Car Group and News Corporation, through realestate.com.au.

However, the rapid rise of generative AI companies and AI as a primary source of news-based search is a significant driver of sectoral change. The relationship between information source and content is less clear than is the case for traditional online search based on links to news stories. But the information is ultimately being sourced from news publishers, so the principle underpinning the News Media Bargaining Incentive that large digital platforms contribute to the sustainability of news and journalism in Australia can and should extend to major AI companies that operate in Australia.

Q14: Would there be significant unintended outcomes if the code registration process was used to define news businesses for the purpose of defining eligible expenditure – please provide examples? How would an alternative process address these issues?

The existing code registration process offers several benefits and can be applied in a way that avoids significant unintended outcomes. However, our research indicates that issues could arise where the code’s eligibility criteria are defined too broadly or rely on unenforced standards. The following recommendations identify approaches that could mitigate these risks and improve the effectiveness of the scheme:

- **Empower the ACMA to apply and interpret eligibility tests**, including professional standards and content tests, to ensure consistency as well as independence from political influence.
- **Create a collective bargaining pathway for small and independent news providers**, defined by a revenue cap rather than a minimum threshold, to address power imbalances in negotiations for the most marginalised providers – particularly for Aboriginal and Torres Strait Islander news media
- **Require independent and enforceable accountability mechanisms as a condition of eligibility**, such as external complaints processes, an ombudsman, or membership in a standards body with enforceable rules

Our research into government support of news media (Koskie & Wilding, 2026) finds that defining inclusion criteria loosely can have a massive impact. It can greatly expand the scope and cost of support. Simultaneously, it can diffuse its impact by leaving the aims unclear. Here, however, the combination of tests, particularly the professional standards and content tests, provide some assurance that the incentive will yield agreements that specifically fund “core news content” and the professional work required to deliver it. Some of the terminology used remains vague, such as content on “matters” that are explicitly broad (with some exclusions) and “internal standards” that are left open for the organisations’ interpretations.

The use of an independent statutory authority, the ACMA, means that determination on these terms will be kept at some distance from political interference – a key concern for any government regulation of the way that media markets operate (Murschetz, 2020). Wilding (2021) suggests that a key limitation to the original code was the lack of authority invested in the ACMA or ACCC to oversee its implementation due to the way it was established as voluntary, and the proposed NMBI provides remedies to this concern.

However, there are some key vulnerabilities that will require attention to ensure that these bargaining agreements include appropriate news providers and also support the availability of relevant news for the Australian public. One of the biggest challenges facing this and similar interventions is the risk of not only reproducing but actually reinforcing existing power imbalances within the media environment itself (Lee & Molitorisz, 2021).

The NMBC did yield results and had a notable impact on Australia's news media environments, but the benefits overwhelmingly favoured the largest publishers like News Corp. According to the Public Interest Journalism Initiative (2022), 41% of small local news outlets, who lacked the bargaining position of their much larger counterparts, were excluded from the bargaining code specifically proposed to address the platforms' dominant position in negotiations a full year after its implementation. While there has been a recommendation that the revenue test be cut in half – from \$150,000 to \$75,000 (Bossio & Barnet, 2023) – this has not been included in the News Media Bargaining Incentive.

Larger news media organisations like 9 News gained access to more lucrative deals than independent news organisations like *The Conversation* (Bossio & Barnet, 2023), which relies entirely on online traffic for its readership and is disproportionately likely to see their news distribution affected by platforms. Potentially more pressing is that Australia's Aboriginal and Torres Strait Islander communities rely on a combination of traditional and novel approaches for presenting and accessing the news (Waller, 2019) that may not fit neatly into these frameworks.

While the scrapping of a revenue test in some form would invite additional challenges for scoping appropriate and effective inclusions, the NMBC is ideally positioned to ameliorate the problem of power imbalances by consolidating the power of these smaller operators towards a collective bargaining agreement. In this case, rather than a revenue minimum, a small and independent publishers' group should be included that has a revenue cap, but whose collective members represent a substantial portion of Australia's news media providers. This could also be expanded to include some organisations, such as radio stations, that find themselves excluded from bargaining because news is identified as too limited a part of their service provision. A more specialised approach may be required to ensure that Aboriginal and Torres Strait Islander media, whose news stretches across online and offline spaces (Waller, 2019), have a voice and the backing to have their concerns represented.

A separate but equally important concern is that the NMBC replicates a weakness of the News Media Bargaining Code: although it requires applicants to demonstrate "professional editorial standards," it does not require a mechanism to ensure those standards are enforced. Under the Code, news organisations may satisfy the requirement simply by adopting internal editorial rules – an approach that the UTS Centre for Media Transition (Wilding et al., 2021) described as "regrettable" because it permits eligibility without any external accountability.

In effect, the NMBC proposes to recognise and support news businesses on the basis of standards that are neither verified nor subject to meaningful oversight. This design choice is difficult to reconcile with the well-established limits of Australia's media self-regulatory system (Wilding, 2021). A framework intended to relevant and valuable news in the public interest must also require independent, demonstrable accountability, not merely the presence of professional norms. However, Flew and Swift (2013) note that Australia's media proprietors are especially resistant to journalism norms that highlight social responsibilities for the media.

An alternative to this approach would be to supplement the NMBI’s requirement for “professional editorial standards” with a proportionate, independent form of accreditation for accountability. This would not regulate content or impose significant administrative burdens, but would instead require eligible organisations to demonstrate the presence of an effective accountability mechanism, such as an external complaints process, an ombudsman, or membership in a standards body with enforceable requirements. This would mirror the Belgian approach of requiring a “responsible editor” as a condition of eligibility (Koskie & Wilding, 2026). A light-touch accreditation framework, which can be scaled to accommodate both large and smaller or independent media organisations, would align the scheme with international best practice while preserving editorial independence. Crucially, it would ensure that recognition under the NMBI rests on verifiable accountability practices rather than self-declared internal standards, strengthening both the transparency and legitimacy of the scheme.

Q17: What information, if any, do you think should be reported in relation to the incentive? How should that information be collected?

Q18: Should appropriate additional expenditure be eligible for the deduction? If so, should additional guardrails such as a proportional cap be put in place?

Q19: Do you agree that no limits should be placed in legislation on how eligible expenditure is used by the recipient news businesses?

As Rod Sims (2022) reiterated in his report for the Judith Neilson Institute, the News Media Bargaining Code as a regulatory instrument was designed to address one single objective from the *Digital Platform Inquiry* (ACCC, 2019)—specifically, to remedy the competitive imbalance that exists between digital platforms and news media businesses. Assuming that other objectives identified in the Inquiry are to again remain out of scope of the Incentive, then some reporting requirements (Q17), deductions (Q18) and limits on expenditure (Q19) should be considered to ensure that smaller local and regional news media businesses are not disadvantaged in the deal-making process—a concern raised by news media stakeholders we spoke to for the ARC funded *Valuing News* project (Stepnik, Fisher & Schapals, 2026).

To ensure that competitive imbalances are addressed, periodic reporting on the number of deals, the total value of deals, and the names of news businesses with which the platform has entered into deals should be required, alongside a **representative figure for the dollar value of each deal** (e.g. Less than AUD\$499,999; between \$500,000 and \$4,999,999; between \$5,000,000 and \$19,999,999; greater than \$20,000,000). Such reporting can encourage platforms to make deals with a diversity of eligible news media businesses, lest they be seen to be favouring larger, better resourced news media businesses over less resourced local and regional outlets reporting in the public interest.

However, if the Incentive is to support and work in tandem with the News MAP’s objective of promoting the production of public interest journalism—as it is suggested within the Department of Treasury consultation paper, then consideration should be given to periodic reporting requirements where **news media businesses share what percentage of funds received were directly invested in the production of public interest journalism**. Such reporting would provide valuable longitudinal data as to whether the Incentive’s secondary objective of supporting public interest journalism is meaningfully addressed, or if funds are purely addressing competitive imbalances in the market.

Failing to recognise the financial contributions that digital platforms make through meaningful support programs could encourage platforms to retire these programs,

diverting these funds toward deals under the incentive instead. A cap on 'other' expenditure should be considered **in tandem with the individual deals made**. This would ensure that digital platforms do not justify a lack of direct deals with smaller news media businesses as reasonable where these smaller businesses have benefitted from other support programs. A proportional cap that takes into consideration the **total benefit** to individual news businesses, and that would be required in the **periodic reporting** should be considered.

If the above suggestions are adopted into the Incentive, and the sole objective of the Incentive remains its primary objective of addressing competitive imbalances in the market, then no further limits should be placed on how eligible expenditure is used by news media businesses. However, this would be contingent on the News MAP delivering against its objective of supporting public interest journalism and media diversity in Australia.

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About the Centre for AI, Trust and Governance

The AI, Trust and Governance Centre (CAITG) at the University of Sydney is our flagship hub for research and innovation examining the complexities of emergent AI technologies from a socio-technical perspective.

We are dedicated to advancing responsible AI development and implementation through multi-disciplinary research, fostering public trust, and informing policy decisions in complex regulatory environments.

Our mission is to enhance the understanding of trust within societies while paving the way for advancements in safety, governance, and law.

We believe in the power of interdisciplinary collaboration to tackle pressing challenges. By harnessing diverse perspectives and expertise, we develop practical, implementable solutions that not only inspire but also drive meaningful and equitable change in our societies.

We draw upon academic disciplines associated with humanities, social sciences, law, communication, business, the arts and design, in collaboration with the sciences, computing and engineering.

Through active engagement in policy development, the Centre shapes the global dialogue on AI governance and ethics and defines new industry standards. Our vision is to enable society to achieve AI development, deployment and use that is informed by principles of equity and justice, a commitment to trust and integrity, and effective stewardship through policy and governance.

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