



Submission to Mandatory Bargaining Code review

May 3rd 2022

Background to Pro Bono Australia

Pro Bono Australia is the pre-eminent media organisation for Australia's social sector, quoted widely and, on occasion, in Parliament. We are a small publisher employing four journalists, some part time, with a total of 11 people across the organisation.

Pro Bono Australia was established by Karen Mahlab AM in 1999 as a for-purpose business. Since then it has developed into a national "hub for the common good", with an audience of close to two million Australians.

The community around Pro Bono Australia is vibrant and diverse. It spans sectors, organisations and individuals. It embraces volunteers, not-for-profits and charities, changemakers, social enterprises, investors and philanthropy as well as government and business. The Charities sector employs 11% of the Australian workforce - more than 1.3 million people.

Our mission is to "activate good intentions" and we do that through giving profile to issues and movements not written about in mainstream media outlets. We conduct research and advocate on behalf of the sector we serve, as a result becoming highly trusted and influential in government and community sector circles.

Pro Bono News shines a light on issues that would otherwise go unreported in

mainstream media.

Pro Bono Australia is a member of the Press Council of Australia and accredited as a public interest media organisation by the Australia Communications and Media Authority (ACMA).

Pro Bono Australia is one of the 23 publishers who are part of the ACCC-approved Minderoo collective bargaining group, named the Public Interest Publishers Alliance (PIPA), whose discussions are currently live.

Pro Bono Australia was a recipient of the Walkley Newsroom sustainability fund.

Pro Bono Australia was also the initiator, with Broadsheet and Decade of Action, of the #waitingforzuck campaign which convened 54 small publishers to halt publishing for a day to bring attention to the lack of deals done by Meta and Google with smaller publishers.

Karen Mahlab was a founding director of the Public Interest Journalism Initiative (PIJI).

Pro Bono Australia is pleased to be invited and able to make this submission.

Karen Mahlab AM Founder and CEO
Wendy William Editor Pro Bono News

General statement

We consider the establishment of the Mandatory Bargaining Code to be generally successful in catalysing Google and Meta to make deals for an estimated extra \$200 million into news organisations across Australia in the next three to five years.

This is wonderful, however, all deals have been made outside the Code under threat of the Code being enacted. Due to unequal ability for small publishers to negotiate the ultimate effect of this has left small publishers, such as Pro Bono Australia, unsupported by the platforms and exposed to increased competition.

As a result of the negotiations done outside the Code small and medium publishers like Pro Bono Australia have in effect been penalised and as a result we believe public interest journalism in Australia will suffer. More needs to be done for small to medium publishers.

We believe that this needs to be addressed by the Mandatory Bargaining Code, the ACCC, and Treasury.

Adverse effects of the deals done outside the Code

1. Decline of competition

Smaller publishers have not been included in the Mandatory Bargaining Code related negotiations with Meta and Google that reportedly netted \$200 million for 20+ bigger media organisations. This is **putting smaller media organisations at a competitive disadvantage.**

We are currently at a competitive disadvantage with larger publishers who have received funds. They have been given greater capacity to pay staff, employ journalists and create content in competition with our markets.

In addition, we understand that the balance sheets of the larger funded publishers have been bolstered so acquisitions are being considered leading potentially to less diversity in publishers.

While this is certainly good for the bigger publishers, we smaller folk who deliver niche, cultural, and diverse voices through a plethora of publishing platforms have missed out. In fact, we're worse off than before.

2. Public interest journalism is not being specifically/necessarily addressed by the agreements made outside the Code

The focus on supporting public interest journalism has been lost in the payments made to date. To the extent we know of (since deals are all commercial in confidence) the production of public interest journalism was not a critical or deciding factor in dissemination of deals or the making of grants such as the Meta funded Walkleys grants.

The purpose of the Code was to support sustainable public interest journalism but the focus on it has been lost.

Those publishers who went through the process of being registered on the ACMA site have been acknowledged as publishers that produce public interest journalism however this accreditation has been ignored in all negotiations. SBS and The Conversation have both been unsuccessful with Meta as have many other publishers accredited by ACMA.

It is our view that public interest journalism must come back to being central to all granting and deal making otherwise the Code, or the threat of designation under the Code, has failed in its stated purpose.

3. No recognition of smaller medias' contribution to diversity and richness and contribution to public interest journalism.

Small publishers are central to the diversity of media in Australia and represent different voices of many communities and issues not reported by the major media publishers. Many small publishers, like Pro Bono Australia, write largely on public interest issues.

Because we are small it's hard to be "loud" but collectively we represent many industries, communities and diverse voices across Australia. Arts, community, property, nationalities, culture, current affairs, science; we all have a neck of the woods and whilst we are small we have a large impact.

Pro Bono Australia alone reaches 2 million people a year. Pro Bono Australia is the main voice for the community/social sector in Australia and without our media organisation social sector issues would not get heard as they are not run in mainstream media. This is true for many niche publications that add to the richness of the information we read and ultimately to a more vibrant engaged democracy.

Small media companies don't have the same negotiating power as the bigger media players and even though many of us have signed up and been approved as accredited public interest publications by the Australian Communications and Media Authority (ACMA) we have not received deals from Meta or Google through individual negotiation despite approaches being made..

Lack of transparency around larger publisher deals

The silencing effect

All commercial deals done by Meta and Google with the larger publishers are commercial in confidence. We have no transparency around terms and conditions of the deals made.

What we have heard is that all deals are up for renewal in 3-5 years and that should Google or Meta be designated under the Code all deals will be off the table and renegotiated. We are very concerned that the practical implications of this are:

1. that the larger publishers will hesitate in speaking out against the platforms not wanting to bite the hand that feeds them
2. Not want to be in a lesser position to renegotiate in 3-5 years when their existing contract ends.

Our concern is, and we have heard some evidence of this, that the larger publishers will not rock the boat and will self silence. This has negative implications for those left with a deal in that larger publishers will not publicly support smaller publishers and, further, that potentially those publishers who received deals will not speak out against the platforms in general.

Lack of Accountability

Lack of transparency about deals made outside the code also allows for a lack of accountability on the part of the platforms, and a lack of consistency in how publishers are dealt with.

There is reason to believe that the platforms have been inconsistent in their approach / valuation of news. This lack of an even playing field does little to support public interest journalism.

5. The review seeks stakeholder views on the other forms of support made available by digital platforms to individual news businesses and the Australian news sector more broadly.

Pro Bono Australia received a Meta Newsroom sustainability grant via the Walkley Foundation for the development of a paid subscriber model. There were approximately 160 grant applicants. Only 53 were successful.

The funding is helpful and will allow us to go some way in developing a paid subscription model for Pro Bono News which will assist in our longer-term sustainability if successful. The Walkleys Grant terms were relatively easy to comply with however, we are not able to reapply in subsequent years. The grant we received does not allow us to hire more Journalists.

We understand that the \$15 million allocated by Meta to the Walkleys was Meta's way of dealing with smaller publishers and was used as a way of Meta deflecting direct approaches by smaller publishers. Some of the publishers who had been in extensive negotiations with Meta, were encouraged by Meta to apply and then were unsuccessful. This was disappointing and a waste of time for those publishers.

While Pro Bono Australia welcomes the funding, a grant is very different to a commercial agreement. It fails to recognise how the platforms use our content, and pits smaller publishers against each other nor is it a long-term solution - it is a one-off injection of funding, that comes with its own reporting requirements.

None of the 20+ larger media organisations who were successful in negotiations with Meta were subject to the same onerous and competitive grant process. We see this as unjust.

The review seeks stakeholder views on cases where digital platforms and news businesses have not been able to reach commercial deals.

Despite approaches to both Meta and Google, Pro Bono Australia was not successful in engagement with them.

As a consequence, when approached, we joined the ACCC approved Public Interest Publishers Alliance (PIPA) collective bargaining group led by the Minderoo Foundation pro bono.

The whole exercise has confirmed the fact that small and medium publishers will receive nothing unless we group together.

The pathways to achieve this have depended not on the Code but on a small number of activist publishers who have spent large amounts of time coordinating collective action, developing the infrastructure needed to operate and gathering

support, including a small war chest generated by each of the publishers paying \$500.

We found the PIPA group to be a disparate group, not all of whom were publishers of public interest journalism and the initial meetings were chaotic. Nevertheless we have continued to be part of the group to drive a commercial outcome for Pro Bono Australia and this seems to be getting some traction although, as of writing, nothing has not been finalised or signed.

Minderoo's Emma McDonald is the lead on the project and whilst she has been doing a terrific job there is still no indication of any potential deal with Meta. After seven months of negotiations, a deal with Google is imminent but the terms have not been sighted by the group and therefore not finalised.

The **#waiting for zuck** campaign initiated by Pro Bono Australia, Broadsheet and Decade of Action had 54 publishers participating by halting all news publications for one day and posting dynamic creative collateral across their sites and social media. This was incredibly effective, garnering over 7,000 website visitations and 600+ emails to the federal Treasurer's office, protesting the fact that smaller publishers have been left out of the deals made and calling for designation of Google and Meta under the Code.

We believe this spooked Google to re-engage with negotiations to offer a reasonable deal with the PIPA group and brought attention to the issue on the international stage as the campaign was reported in five countries. Meta, however, has not reacted even though the campaign was directly aimed at them.

The fact that we were able to run this campaign at all has only been as a result of the generosity of Decade of Action in doing the campaign creative and execution work pro bono. No small publisher would be able to afford to create such a campaign on their own. Pro Bono Australia and Broadsheet also spent many many hours on developing this campaign.

We are very appreciative of the fact that the ACCC allowed the collective bargaining group to form and collectively it gave us hope of some outcome but, so far, one not yet seen.

Many thanks for taking the time to review this submission.

