



Ministerial Submission

MS24-000430

FOR ACTION - Government Response to Meta's removal of Facebook News

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP

TIMING

Urgent – as requested by your office.

RECOMMENDATION

• That you sign the letter at Attachment A addressed to the Chair of the Australian Competition and Consumer Commission (ACCC) requesting the ACCC's advice.

Signed / Not signed

 That you sign the letters (Attachment B) to Australian news media publishers regarding today's announcement by Meta Platforms Inc (Meta).

Signed / Not signed

• That you note the requested factsheet (<u>Attachment C</u>) provided earlier today for potential public dissemination on the News Media and Digital Platforms Mandatory Bargaining Code.

Noted

/03/2024 Signature Date:

KEY POINTS

- In relation to Meta's announcement today on the withdrawal of Facebook News in Australia, your office requested letters to be sent to:
 - The ACCC: requesting the ACCC's advice in relation to the News Media Bargaining Code

OFFICIAL

OFFICIAL

- News Media Publishers: alerting them of Meta's decision and that you have sought advice from the ACCC.
- Also attached is a fact sheet on the Code that was provided earlier in support of your media announcement.

Clearance Officer

s 22

Director **Competition and Consumer Branch** Market Conduct and Digital Division

01/03/2024

Contact Officer

Assistant Director (a/g)

Ph: +S 22 Mob: \$ 22

CONSULTATION

The ACCC was consulted on both letters. DITRDCA provided contact details for publishers.

ATTACHMENTS

- A: Letter to the ACCC from the Hon Stephen Jones MP
- B: Letter to publishers from the Hon Stephen Jones MP
- C: Fact sheet on News Media Bargaining Code

News Media and Digital Platforms Mandatory Bargaining Code

Factsheet

What is the Code and its purpose?

The News Media and Digital Platforms Mandatory Bargaining Code ('the Code') aims to address bargaining power imbalances to ensure that digital platforms fairly remunerate Australian news businesses for news content, thereby helping to sustain public interest journalism in Australia.

The Code provides incentives for digital platforms and news businesses to reach commercial deals outside of the Code. Where that does not occur, it provides a framework (following designation of a digital platform) for good faith negotiations, and if required, arbitration between the parties.

How does the Code operate?

The Minister may bring individual digital platforms under the Code – that is, 'designate' them. Once designated, a digital platform is subject to the terms of the Code. The process for designation is set out below.

Steps	Process/Considerations
Step 1:	The Minister may designate a digital platform after considering:
The Minister	
considers the	Whether there is a significant bargaining power imbalance between the digital
key criteria for	platform and Australian news businesses (bargaining limb); and
designation	2. Whether the platform has made a significant contribution to the sustainability of
	the Australian news industry through agreements relating to the news content
	of Australian businesses, including agreements about remuneration
	(sustainability limb).
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	When making a designation determination, the Minister may consider any Australian
	Competition and Consumer Commission (ACCC) reports or advice.
Step 2	The Minister must give the corporation notice in writing that the Minister intends to
Give Notice	make a determination specifying a designated digital platform and service(s).
Step 3	After 30 days has elapsed (starting on the day the notice is given), the Minister makes
Issue	the designation determination.
Determination	
Step 4	Registration enables news businesses to, for example, participate in the bargaining,
The Code is in	mediation, and arbitration processes in the Code with designated digital platforms.
operation	News businesses may be registered by Australian Communications and Media
	Authority (ACMA) if they satisfy tests relating to annual revenue, the type of
	news content they publish, having a predominantly Australian audience, and
	professional and editorial standards. A list of news businesses that have already
	been registered is on ACMA's website.
	been registered is on Acivia s website.

- Where registered news businesses are not satisfied with the outcome of negotiations with designated digital platforms, they can trigger provisions in the Code, including:
 - requiring designated digital platforms to engage in good faith bargaining for up to three months followed by mediation; and
 - if a commercial deal still cannot be reached, registered news businesses may initiate a compulsory arbitration process to determine the amount of remuneration that designated digital platforms must pay them.
- The Code also imposes general obligations on designated digital platforms, including that they:
 - provide advance notice to registered news businesses when they make major algorithm changes,
 - must not differentiate between any news organisations, including registered and unregistered news organisations, due to their participation or non-participation in the Code.

History of the Code

The Code was created to address concerns identified by the ACCC in its July 2019 report on digital platforms. The report found substantial bargaining power imbalances between some digital platforms and Australian news media organisations which meant news media organisations were not fairly remunerated for the value their content provided for digital platforms. In particular, the 2019 report identified bargaining power imbalances between Australian news businesses and each of Google Search and Facebook (now Meta) due to the fact these services were both "unavoidable trading partners" for news businesses.

To: s 22 Robertson, Belinda; s 22

Cc: s 22 ; McDonald, Tony; Kelly, James; Philp, Brenton

Subject: Letter to the ACCC requesting advice [SEC=OFFICIAL]

Date: Friday, 1 March 2024 5:30:00 PM

Attachments: image001.png

Tracked change version - Letter to ACCC from The Hon Stephen Jones MP.docx

Clean version - Letter to ACCC from The Hon Stephen Jones MP.docx

Hi s 22 Belinda, and s 22

As requested this morning, please find *attached* the letter to the ACCC requesting advice on the Code (both a clean and tracked-change version have been provided for visibility). We have consulted with the ACCC on the drafting of this letter and will send through a covering brief attaching both this letter and the letter to publishers through PDMS so this is formally recorded in the system later today.

Happy to discuss this further.

Kind regards,

s 22 — Assistant Director (a/g), SYD

Competition Policy Unit, Competition and Consumer Branch Market Conduct and Digital Division

The remainder of the email is outside the scope of the request and has been deleted

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both

To: S 22 Robertson, Belinda

Cc: s 22 ; McDonald, Tony; Kelly, James; Philp, Brenton

Subject: MS24-000430 - Government response to Meta"s removal of Facebook News [SEC=OFFICIAL]

Date: Friday, 1 March 2024 7:05:13 PM

Attachments: MS24-000430.docx

MS24-000430.docx Letter to ACCC from The Hon Stephen Jones MP.docx The Hon Stephen Jones MP letter to Publishers.docx News Media Bargaining Code factsheet.docx

image001.png

OFFICIAL

Hi **S 22** and Bel,

Please find attached a covering brief for the material we emailed earlier today on Meta's announcement and the News Media Bargaining Code. This will follow in PDMS.

I am aware the letters are being edited in the office.

Hope you have a good weekend.

Kind regards,

s 22

s 22 — Director

Competition Policy Unit, Competition and Consumer Branch

Market Conduct and Digital Division

P +s 22 M +s 22

s 22

treasury.gov.au

Langton Crescent, Parkes ACT 2600 Twitter | LinkedIn | Facebook

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.

OFFICIAL

To: McDonald, Tony

Cc: Kelly, James; § 22 ; Robertson, Belinda; § 22

Subject: Letter to publishers [SEG_OFFICIAL Geneitive]

Date: Friday, 1 March 2024 10:02:12 AM

OFFICIAL: Censitive

Hi s 22

Thanks again for your help so far with the news media bargaining code issue. We are planning on meeting publishers today, and we also think that the Assistant Treasurer should write to all publishers (whether or not they are registered under the code) letting them know of Meta's decision and that we have sought advice from the ACCC.

Do you mind quickly preparing a few letters we can send this morning?

We think the letter should say the following:

- Meta has informed me of its global decision to remove Facebook News in Australia and in the United States.
- As a result, Meta will no longer pay for news content in Australia.
- This follows Meta's removal of Facebook News in Canada, UK, France and Germany last year.
- Meta's actions will have a significant local impact. Around half of Australians rely on social media platforms for their news, and Australian publishers deserve fair compensation for the content they produce.
- As a result of Meta's decision, I sought advice from the Australian Competition and Consumer Commission on my designation powers under the News Media Bargaining Code.
- I ask that you cooperate with the ACCC and provide it with any relevant information that would inform its advice to me. I have copied in the Minister for Communications, and the Chair of the ACCC.

Can you also work with communications to get a list of publishers we should write to? We think it should include all major publishers, and industry groups for smaller publishers (e.g. Country Press Australia, Digital Publishers Alliance).

Secondly, while we have verbally sought advice from the ACCC on this matter, we think the Assistant Treasurer should formally write to Gina – can you quickly pull together a letter this morning?

Thanks again

s 22 — Adviser (he/him)

The Hon Stephen Jones MP

Assistant Treasurer and Minister for Financial Services

M +s 22

I acknowledge the traditional owners of country throughout Australia, and their continuing connection to land,

water and community. I pay my respects to them and their cultures and to elders past, present and emerging.

OFFICIAL Consisive

To: \$ 22 ; McDonald, Tony; \$ 22

Subject: RE: s 22 shared "240301 The Hon Stephen Jones MP letter to publishers" with you

[SEC=OFFICIAL]

Date: Friday, 1 March 2024 5:47:22 PM

Attachments: <u>image008.png</u>

image009.png image010.png image011.png image012.png image013.png image001.png

OFFICIAL

Do you mean their changes to the ACCC letter? – I think they only had very minor changes to this publishers letter, and this one doesn't need any further changes.

Kind regards,

s 22

s 22 — Director

Competition Policy Unit, Competition and Consumer Branch

Market Conduct and Digital Division

Ps 22 M +s 22

s 22

treasury.gov.au

Langton Crescent, Parkes ACT 2600 <u>Twitter</u> | <u>LinkedIn</u> | <u>Facebook</u> The remainder of the email is outside the scope of the request and has been deleted

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.

From: \$ 22 To: \$ 22

Cc: NMBC (News Media Bargaining Code); McDonald, Tony; § 22

Subject: Email address for NMBC [SEC=OFFICIAL]

Date: Monday, 4 March 2024 12:41:16 PM

Attachments: <u>image001.png</u>

OFFICIAL

Hi s 22

It is ok for you to reference it now – but we wont be able to access emails sent to it for at least an hour or two.

Kind regards,

s 22

s 22 — Director

Competition Policy Unit, Competition and Consumer Branch

Market Conduct and Digital Division

P +s 22 M +s 22

s 22

treasury.gov.au

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OFFICIAL

From: \$ 22 To: \$ 22

Subject: RE: NMBC letters [SEC=OFFICIAL]

Date: Tuesday, 5 March 2024 4:17:29 PM

Attachments: Assistant Treasurer and Minister for Communications - Joint letter to Paramount.pdf

OFFICIAL

Channel 10 as discussed

s 22 — Adviser (he/him)

The Hon Stephen Jones MP

Assistant Treasurer and Minister for Financial Services

Ms 22

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ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Guardian Australia Level 2, 607 Bourke Street Melbourne VIC 3000

via: s 47F

@guardianaustralia.com

Dear s 47F

We are writing regarding the announcement by Meta that it has decided to remove Facebook News in Australia, and that it will not enter into new commercial agreements with Australian news businesses for the provision of news content on its digital platform services.

The Albanese Government is committed to promoting a strong, sustainable and diverse media sector given its vital importance to our democracy, economy and society.

The News Media and Digital Platforms Mandatory Bargaining Code (the Code) aims to address bargaining power imbalances to ensure that digital platforms fairly remunerate news businesses for the content they generate.

The Code provides incentives for digital platforms and news businesses to reach commercial deals outside of the Code. If that is not possible, it provides a framework (following designation of a digital platform) for good faith negotiations and mediation between the parties. Where agreement cannot be reached, it sets out an arbitration process to determine remuneration payable by a digital platform.

In a range of meetings with industry stakeholders, we have clearly expressed the Government's expectation that news businesses and digital platforms negotiate in good faith.

The Government is deeply disappointed by Meta's decision, which will have a significant local impact. The decision removes a significant source of revenue for Australian news businesses and the Government has noted that news businesses deserve fair remuneration for the content they provide.

The Australian Government is committed to the Code and is seeking advice from Treasury and the Australian Competition and Consumer Commission (ACCC) on next steps.

We have copied in the Chair of the ACCC, Ms Gina Cass-Gottlieb, and the Secretary of the Treasury, Dr Steven Kennedy PSM.

V

Yours since

The Hon Stephen Jones MP

The Hon Michelle Rowland MP

Michelle Rowland



ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Junkee Media 52-54 Turner Street Redfern NSW 2016

via: \$ 47F @junkeemedia.com

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MINISTER FOR COMMUNICATIONS

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Mamamia Level 18, 100 William Street Woolloomooloo NSW 2011

via: s 47F @mamamia.com.au

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s 47F

News Corp Australia 61-81 Kippax Street Surry Hills NSW 2010

via: s 47F @news.com.au

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ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Nine Entertainment Co Locked Bag 999 North Sydney NSW 2059

via: \$ 47F @nine.com.au

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Ref: MS24-000430

Monday, 4 March 2024

s 47F

GPO Box 10 Sydney NSW 2000

via: s 47F @networkten.com.au

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THE HON STEPHEN JONES MP ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Private Media PO Box 5239, 380 Bourke Street Melbourne VIC 3001

via: sales@privatemedia.com.au

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Ref: MS24-000430

Monday, 4 March 2024

s 47F

Schwartz Media 22-24 Northumberland St Collingwood VIC 3066

via: S @schwartzmedia.com.au

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MINISTER FOR COMMUNICATIONS

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s 47F

Seven West Media GPO Box 7077 Alexandria NSW 2015

via: s 47F @Seven.com.au

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ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Solstice Media 165 Grenfell Street Adelaide SA 5000

via: \$ 47F @solsticemedia.com.au

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MINISTER FOR COMMUNICATIONS

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Monday, 4 March 2024

s 47F

ng Corporation

GPO Box 9994

Sydney NSW 2001

via: s 47F

@abc.net.au

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The Government is deeply disappointed by Meta's decision, which will have a significant local impact. The decision removes a significant source of revenue for Australian news businesses and the Government has noted that news businesses deserve fair remuneration for the content they provide.

The Australian Government is committed to the Code and is seeking advice from Treasury and the Australian Competition and Consumer Commission (ACCC) on next steps.

We have copied in the Chair of the ACCC, Ms Gina Cass-Gottlieb, and the Secretary of the Treasury, Dr Steven Kennedy PSM.

V

Yours since

The Hon Stephen Jones MP

The Hon Michelle Rowland MP

Michelle Rowland



ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Australian Community Media Level 6, 309 Kent Street Sydney NSW 2001

via: \$ 47F @auscommunitymedia.com.au

Dear s 47F

We are writing regarding the announcement by Meta that it has decided to remove Facebook News in Australia, and that it will not enter into new commercial agreements with Australian news businesses for the provision of news content on its digital platform services.

The Albanese Government is committed to promoting a strong, sustainable and diverse media sector given its vital importance to our democracy, economy and society.

The News Media and Digital Platforms Mandatory Bargaining Code (the Code) aims to address bargaining power imbalances to ensure that digital platforms fairly remunerate news businesses for the content they generate.

The Code provides incentives for digital platforms and news businesses to reach commercial deals outside of the Code. If that is not possible, it provides a framework (following designation of a digital platform) for good faith negotiations and mediation between the parties. Where agreement cannot be reached, it sets out an arbitration process to determine remuneration payable by a digital platform.

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Yours since

The Hon Stephen Jones MP

The Hon Michelle Rowland MP

Michelle Rowland



THE HON STEPHEN JONES MP ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP

MINISTER FOR COMMUNICATIONS

Ref: MS24-000430

Monday, 4 March 2024

s 47F

Country Press Australia Locked Bag 1000 Ascot Vale VIC 3032

via: \$ 47F @warragulgazette.com.au

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We have copied in the Chair of the ACCC, Ms Gina Cass-Gottlieb, and the Secretary of the Treasury, Dr Steven Kennedy PSM.

V

Yours since

The Hon Stephen Jones MP

The Hon Michelle Rowland MP

Michelle Rowland



THE HON STEPHEN JONES MP ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MS24-0000430

Monday, 4 March 2024

Gina Cass-Gottlieb Chair Australian Competition and Consumer Commission GPO Box 3131 Canberra ACT 2601

via: s 47F @accc.gov.au

Dear Ms Cass-Gottlieb

Thank you for meeting with me on Friday 1 March 2023 where we discussed the Australian Competition and Consumer Commission's (ACCC) capacity to provide advice to me in relation to the News Media and Digital Platforms Mandatory Bargaining Code (the Code). Following our discussion, I am writing to confirm that I am seeking urgent advice from you on this matter.

As you are aware, Meta Platforms Inc (Meta) has announced its global decision to remove Facebook News (its dedicated news tab) in Australia and in the United States of America in early April. This replicates Meta's decision in September last year in the United Kingdom, France, and Germany. Meta has also indicated it will not enter into new commercial deals for traditional news content in these countries. I note the decision does not at this stage remove the ability to access news on Facebook or Meta's other platforms.

Under the Code, I may make a designation determination that specifies a corporation as a *designated digital platform corporation* (designated digital platform) and one or more of its services as *designated digital platform services* of the corporation (designated service). To make a designation determination I must consider:

- 1. Whether there is a significant bargaining power imbalance between the digital platform and Australian news businesses (bargaining limb); and
- 2. Whether the platform has made a significant contribution to the sustainability of the Australian news industry through agreements relating to the news content of Australian businesses, including agreements about remuneration (sustainability limb).

The Code specifies that I may consider any reports or advice of the Commission in making a designation determination. In the circumstances of Meta's announcement, I am proposing to consider the potential application of the Code in relation to Meta and its relevant services, Facebook and Instagram. Given the ACCC's subject matter expertise, I request the Commission's advice to assist with my consideration of the first of the designation criteria. Specifically, I request that the ACCC provide advice on:

- Whether a significant bargaining power imbalance exists between Meta in respect of the Facebook and Instagram services and Australian news businesses; and
- the extent to which covered news content of Australian news businesses are made available on these services.

I ask that the ACCC works with the news media sector to obtain information that would help inform any decision under the Code in relation to Meta and whether it is an "unavoidable trading partner" for Australian news media organisations. Separately I am writing to Australian news businesses to request their assistance with any requests they may receive from the ACCC (you are copied on these letters).

As part of this request, I ask that the ACCC provide advice on implications for the Australian news media sector of any proposed designation determination of Meta in respect of its Facebook and Instagram services. As above, I request that the ACCC relies on its existing expertise in the markets for the provision of digital platform services and information gathered from engagement with Australian news media organisations.

Further details regarding this request will be settled shortly. However, I request that the ACCC's advice regarding Meta and its Facebook and Instagram services be provided as a priority.

I have copied in the Chair of the ACCC, Ms Gina Cass-Gottlieb, and the Secretary of the Treasury, Dr Steven Kennedy PSM.

Yours sincerely

The Hon Stephen Jones MP

CC: The Hon Michelle Rowland MP, Dr Steven Kennedy PSM.

From: \$ 22 To: \$ 22

McDonald, Tony; s 22

Subject: NMBC material SEC=OFFICIAL Sensitive

Date: Tuesday, 5 March 2024 2:18:33 PM

Attachments: image001.png

OFFICIAL Consistive

Hi s 22

Just wanted to follow up on a couple of things on Meta/NMBC.

I understand the letter to the ACCC, and maybe the ones to news media businesses, have been signed off/sent. Would it be possible to send down the final letters and confirm the status of these?

Also as mentioned to [Second Last week – it would be good to confirm if the fact sheet was released on Friday, and also whether there are any of the talking points the AT is using that you could send down to us? We are getting a few requests for talking points from posts/DFAT – we've largely been referring to the media release and fact sheet to date.

We are also giving thought to next steps – so happy to meet later in the week as \$ 22 flagged.

Kind regards,

s 22

s 22 — Director

Competition Policy Unit, Competition and Consumer Branch

Market Conduct and Digital Division

Ps 22 M +s 22

s 22

treasury.gov.au

Langton Crescent, Parkes ACT 2600 <u>Twitter</u> | <u>LinkedIn</u> | <u>Facebook</u>

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.

OFFICIAL:Censitive

From: \$ 22 To: \$ 22

Cc: McDonald, Tony; s 22 ; Kelly, James; s 22

Subject: RE: Penalties under the News Media Bargaining Code [SEC=OFFICIAL]

Date: Thursday, 7 March 2024 11:42:44 AM

Attachments: <u>image001.png</u>

OFFICIAL

Thanks **s 22**That looks fine.

s 22

The remainder of the email is outside the scope of the request and has been

deleted



To: Robertson, Belinda

Cc: Philp, Brenton; s 47E(d) ; Kelly, James; McDonald, Tony; s 22

Subject: DPSI and NMBC - status update [SEC PROTECTED]

Date: Friday, 8 March 2024 2:24:06 PM

PROTECTED

Hi Bel,

As requested, below is the status update on DPSI and the News Media Bargaining Code. Please let us know if you require anything further.

Thank you,

s 22

s 22

News Media Bargaining Code/Meta announcement

- On 4 March the Assistant Treasurer wrote to the ACCC to seek advice following Meta's announcement. The Assistant Treasurer and Communications Minister also wrote to news media businesses about the announcement asking for their cooperation with any requests from the ACCC or Treasury.
- s 47E(d)
- s 42

PROTECTED