



NEWS BARGAINING INCENTIVE – CONSULTATION ON REVENUE DISTRIBUTION

UTS Centre for Media Transition submission to Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts

May 2026

About the Centre for Media Transition

The Centre (CMT) was established in 2017 as an applied research unit based at the University of Technology Sydney (UTS). It is an interdisciplinary initiative of the Faculty of Design and Society and the Faculty of Law, sitting at the intersection of media, journalism, technology, ethics, regulation and business.

Working with industry, academia, government and others, the CMT aims to understand media transition and digital disruption, with a view to recommending legal reform and other measures that promote the public interest. In addition, the CMT aims to assist news media to adapt for a digital environment, including by identifying potentially sustainable business models, develop suitable ethical and regulatory frameworks for a fast-changing digital ecosystem, foster quality journalism, and develop a diverse media environment that embraces local/regional, international and transnational issues and debate.

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Executive Summary

Thank you for the opportunity to make this submission on the proposed distribution mechanism for funds raised by the News Bargaining Incentive (Incentive), which is to be read in conjunction with the CMT's submission to Treasury on the Incentive draft legislation (Appendix 1). This submission is informed by the CMT's extensive work in researching news funding Schemes around the world, including our 2026 *Funding the Way Forward for Australian News* report, which considered local and international precedents directly relevant to the proposals in the Consultation Paper.¹

The CMT supported the implementation of the News Media Bargaining Code (Code) in 2021 on account of its potential, since realised, to raise significant funds for Australian news businesses. Despite this support, we and others have consistently noted several problems with the design of the Code, including its failure to support a number of smaller news businesses; the absence of any transparency and reporting requirements, leaving the government, industry and the community without even a top level account of the value of deals made between platforms and news businesses; the failure to impose any obligations on news businesses as to how the funds could be spent; the missed opportunity to help maintain media standards and build trust by requiring beneficiaries of this government intervention to sign up to an industry standards Scheme with an independent complaint handling facility; and the failure more generally to tie the Scheme to the public interest, and to public interest journalism.

In our December 2025 submission to the News Bargaining Incentive consultation, we supported the idea of the Incentive in principle but, in our May 2026 submission on the draft legislation (Appendix 1), we raise serious concerns with aspects of the current design of the legislation and we propose amendments. Our December 2025 submission also advocated for urgent consideration of a funding distribution mechanism to ensure that funds collected are available to eligible news organisations as soon as possible, so we welcome this consultation occurring in tandem with the finalisation of the legislation.

In our 2026 Treasury submission, we raised concerns with the structure of the Incentive Scheme. Under the proposed draft legislation, the nature of the Incentive (which currently allows for platforms to make deals with four news groups rather than the 30-40 businesses achieved under the Code), creates a risk that a small number of deals will leave this Scheme without funds, and potentially locks out a large part of the Australian news media, including some of those which previously made deals, without any support, exacerbating media concentration. In that submission, we propose the simple solution of the addition of a baseline number of deals, in conjunction with the incentive percentages, as a way to ensure delivery on the legislation's policy goals.

Assuming the Incentive Scheme proceeds in some form and significant revenue is collected for distribution through the Statutory Payment Scheme, this is an important opportunity to connect the distribution of those funds to Australian Government policies aimed at a sustainable news sector that supports Australian democracy, in a way which was not achieved by the Code. For this reason, the Incentive Scheme, Statutory Payment Scheme and the News Media Assistance Program should, when taken together, deliver on the broad public policy goals articulated in each of the Schemes: supporting the production of public interest news for a healthy democracy and social cohesion.

Further, these interventions should reference and support the goals and measures identified in the government's *Media Diversity Measurement Framework*, including around source and content diversity, rather than perpetuate existing gaps and shortcomings.

These are critical goals which should not be left to chance – each of these related Schemes needs to incorporate transparency, review and evaluation processes so that their impact can be measured and assessed against those well-articulated policy goals.

¹ Eisenberg, J., Markus, T., (2026) *Funding the Way Forward for Australian News: A Review of Local and International News Funding Distribution Mechanisms*, UTS Centre for Media Transition, <https://www.uts.edu.au/research/centres/centre-media-transition/projects-and-research/a-way-forward-for-australian-news>

Our comments in this submission are entirely directed to that holistic view of what's needed for a sustainable Australian public interest news media. In addressing shortcomings of existing Schemes, we note two significant questions to be addressed:

- Should organisations that have done large Incentive deals be entitled to apply for further funds under the Statutory Payment Scheme if, in effect, they are “double dipping”? (We say no – this could create an inequity for other news organisations.)
- Should smaller organisations currently excluded by the existing revenue threshold in the Incentive (if it continues to be part of that legislation) be entitled to apply under the Statutory Payment Scheme? (We say yes – this helps contribute to source and content diversity elements in the *Media Diversity Measurement Framework*.)

For the Statutory Payment Scheme itself, an overarching concern is that using a fixed legislative formula and weightings may create inflexibility as the media and technology landscape evolve, creating the risk that in future the formula may not meet policy goals. The legislation should provide mechanisms for flexibility in the formula, whether by setting principles in the legislation and providing for the details to be made in regulation and/or by including Ministerial or regulator discretion as exists, for example, in the prominence provisions of the *Broadcasting Services Act 1992*.

In summary, while the CMT supports the policy intentions of the Statutory Payment Scheme in principle, we believe significant design aspects need to be addressed to ensure it is *fit-for-purpose, sufficiently flexible and future-proofed*. Key recommendations are as follows:

1. **Flexibility and future proofing:** Instead of a fixed statutory formula, principles should be enshrined in legislation and detailed in regulation. As the media landscape changes, the Minister (or, if appropriate, regulator) should be able to adjust the formula/weightings as needed to deliver on the legislative principles.
2. **Remove revenue thresholds:** To meet broader public policy goals for the sustainability of the Australian news media, all organisations providing core news and otherwise meeting eligibility requirements should be eligible for a share of the Statutory Payment Scheme. That is, the revenue threshold should be abolished for this Scheme (and arguably reduced or abolished for the Incentive, even if it remains under the Code). There is no policy reason to retain the threshold for this Scheme.
3. **Ensure news organisations align with policy goals to support democracy and social cohesion:** We support the proposed compliance measures, but recommend that the professional standards test be enhanced by requiring membership of an industry standards Scheme with an independent complaints handling facility and that compliance measures address organisations repeatedly in breach of their own professional standards.
4. **Fit-for-purpose journalism definition:** To support the production of quality journalism, the definition of eligible employees should be extended beyond the proposed definition to other specified editorial support staff involved in the production of core news.
5. **Remove double-dipping:** News organisations that have done large Incentive deals should not be able to apply for further funding under the Statutory Payment Scheme.
6. **Accountability for funds:** Payment conditions must be extended beyond eligibility requirements (the Paper's preferred approach) to include acquittals demonstrating that funds were used for the purposes of the Scheme i.e., to produce core news. This should be covered in the Scheme's transparency reports and penalties should extend to misuse of funds for purposes other than core news production.
7. **Evaluate to ensure policy goals are being met:** To ensure the Scheme is meeting policy goals, legislation should provide for a review after 2 or 3 years and periodically after that (as per the Code and as recommended in the government's Code review).
8. **Transparency:** We support the proposed transparency measures and recommend that, to ensure consistency across Schemes, the Incentive legislation include similar transparency measures to those raised in this Consultation Paper.

In this submission:

- **Part A** comments on the overall design of the Statutory Payment Scheme, including matters not covered in the Consultation Paper and suggests amendments.
- **Part B** responds to the specific consultation questions.

Part A: Comments on overall design

Scale of the fund

We acknowledge that the amount available for distribution each year under the Statutory Payment Scheme will fluctuate, depending on how much of the Incentive is offset by eligible expenditure. Annual funds for distribution could vary from zero (if platforms fully offset the Incentive charge) to several hundred million dollars. Estimates of deals done under the NMBC were \$200-250 million; with the inclusion of a third digital platform covered by the Incentive, this could potentially grow by more than \$100 million.

The comments below assume significant funding amounts will flow to the Australian media through the Incentive Scheme, whether through deals or this fund. It is therefore critical that - taken together - the Incentive and Statutory Scheme provide an equitable approach that delivers a diverse and sustainable Australian news media. If it eventuates that a large portion of the Incentive funds end up in the Statutory Payment Scheme, it is absolutely essential that its effect on the market is to deliver *public interest* journalism, improve diversity and sustainability and not entrench existing concentration and news deserts. These are critical factors, which we have considered in making the comments below.

Overall concerns with the proposal

Flexibility: We appreciate that a formula-based statutory Scheme provides certainty to the Australian news media. As it stands, the paper proposes that the entirety of the revenue is distributed under a statutory formula tied to a fixed definition of FTE journalism employment. Its benefits include ensuring that grants of funding are tied to an objective measure and do not compromise a news organisation's editorial independence.² However, with that statutory formula and, in particular, a fixed definition comes significant inflexibility, which may not be appropriate to address future shifts in the media and technology environment (including as measured by the ACMA's *Media Diversity Measurement Framework*) and changing roles of those involved in core news production.³

Flexibility can be provided by outlining the formula in regulations rather than in legislation. To the extent some formulation remains in the statute, it is also possible to provide discretionary powers on specified statutory grounds (as in the draft news bargaining bill).

By way of comparison, in Canada, the process for the Canadian Radio-television and Telecommunications Commission (CRTC) to exempt digital platforms from bargaining under the comparable *Online News Act 2023*⁴ enables those platforms to pay an amount set in regulations to a collective fund, which distributes it to registered eligible news organisations. The principle set out in section 11 of the legislation, include that an "appropriate portion of compensation is used for the production of local, regional and national news content". The Regulations (the *Online News Act Application and Exemption Regulations 2023*) provide a formula for distributing the funds: "equitable distribution" is determined with reference to "the number of full-time equivalent employees who, in the previous calendar year, were employed by each news business for the purpose of producing, for news outlets, operated by that business, original news content that is intended to be made available online." The CRTC's exemption order further outlines how compliance will be assessed.

Adopting either or both of the above approaches will enable certainty and flexibility and the ability to future-proof the way the fund is used under the Statutory Payment Scheme.

² Independence measures can be further embedded in payment guidelines and the terms of grant agreements. Examples of how different Government and other funding Schemes around the world enshrine independence (among other matters) are explored in the CMT's 2026 paper *Funding the Way Forward for Australian News: A Review of Local and International News Funding Distribution Mechanisms*. <https://www.uts.edu.au/research/centres/centre-media-transition/projects-and-research/a-way-forward-for-australian-news>

³ This submission proposes a suitable approach to the question of definitions and scope of the formula.

⁴ Section 11, *Online News Act 2023 (Canada)*.

Compliance and use of funds for policy purposes: The proposed compliance requirements focus on whether the news organisations accurately represent eligibility requirements, but do not require recipients to spend funds received on purposes connected with the Scheme. While we appreciate that the journalist FTE-based formula will incentivise further employment of journalists (to achieve potentially a larger share via the formula in future years) this does not sufficiently guarantee appropriate expenditure. Put in perspective, if one or more platforms elects to pay the Incentive charge rather than do deals, this could mean \$100m or more of funds is disbursed to news organisations through the Statutory Payment Scheme, with no accountability other than to maintain existing numbers of journalists. In addition, to ensure its integrity, the Scheme should include expenditure acquittal in line with standard Commonwealth grants practice.

Revenue threshold: As outlined below, if the Statutory Payment Scheme uses revenue threshold criteria developed for the NMBC years ago in a completely different policy context, excludes significant contributors to Australian media diversity and will fail to meet its own policy goals. It entrenches a “second class” of media organisations based on revenue, which does not reflect the value these organisations contribute to Australian media diversity and democracy. The Statutory Payment Scheme has the potential to be a significant contributor to media sustainability in Australia. Its stated policy goals are not the same as the NMBC, where the threshold was first introduced. Other Australian news support programs do not contain this threshold, and nor should this Scheme.

Evaluation: The Scheme should include a review process. This is not addressed in the Consultation Paper. The NMBC contained a statutory review process in s52ZZC of the *Competition and Consumer Act (2010)* (CCA) as does 130ZZV of the BSA in relation to the effectiveness of the prominence provisions. The 2022 Treasury review of the NMBC recommended a further review, and this was accepted in the government’s response. A review of the Statutory Payment Scheme should evaluate its operation, compliance and deliver against policy goals, including whether the formula remains fit for purpose.

Part B: Responses to the consultation questions

Our broad response to issues raised in “Components for Stakeholder Feedback” is set out under the consultation headings, and responses to consultation questions in the tables.

1. Eligibility criteria – organisation

The Consultation Paper describes payments made to the sector under the Statutory Payment Scheme as “fundamentally different” to commercial deals under the Code and Incentive. We agree. Acknowledging this difference is an opportunity to address rather than repeat inequities and inconsistencies in the Incentive Scheme and the Code to ensure the Scheme delivers on the Government’s stated policy intentions.

We support the paper’s intent to link the statutory Scheme to the “clear and valid purpose to support news and journalism in Australia”. However, this support is subject to concerns raised throughout this submission that limiting eligibility under the Statutory Payment Scheme to flawed criteria in the Code/Incentive Schemes means that there is a significant risk the Scheme will not deliver on this stated purpose.

Inappropriateness of using NMBC thresholds

As outlined in the CMT’s December 2025 submission to Treasury’s NBI consultation, there are longstanding concerns with the current tests, which are now proposed to be used in the context of the Statutory Payment Scheme. Those tests were designed for the purposes of the Code more than five years ago to address media market failure, create a practical environment for large digital platforms to bargain without having to reach every Australian news organisation, and to support established rather than emerging news organisations.

This was a different environment. The Statutory Payment Scheme is driven by public interest goals and is to be administered by a government which has - in the years since the Code was enacted in 2021 - articulated a *Media Diversity Measurement Framework* to provide an evidence base for policy, and a *News Media Assistance Program – Government’s Role in News and Journalism* policy to describe the importance, and parameters, of government support for public interest media.

The media and technology environment has also changed significantly since then, news deserts have expanded and smaller organisations providing local news have an even more critical role to play. In this context, it is worth stepping back to consider what this means in the context of overall news funding.

It is as yet unknown whether the Statutory Payment Scheme will deliver minimal funds or potentially up to hundreds of millions of dollars *per year* on an *ongoing* basis. To put this in perspective, funds delivered to news organisations under the fixed-term News MAP Scheme are around \$33m a year from 2025-6 for three years under two streams – the Journalism Assistance Fund, which has been fully allocated, and the News Innovation Fund, which is currently reviewing applications. Unlike the proposed long term Statutory Payment Scheme, there is no certainty of this tranche of News MAP funding being renewed.

Smaller applicants excluded by eligibility criteria from the Code, and seemingly from the proposed Statutory Payment Scheme, have already competed with larger publishers for News MAP funds which were granted substantial funds.⁵ Small but important news organisations which did not receive News MAP funds or develop the need for funding support in the coming three years and beyond will have no avenue unless the Statutory Payment Scheme broadens its thresholds. The question of whether they are included or not in this Scheme could be *existential* for some Australian news organisations, at a time when many local and regional news outlets are closing or endangered.

In various reviews, a number of organisations, including the Local and Independent News Association (LINA), have advocated for the reduction or removal of the revenue thresholds.⁶ The Standing Committee on Communications and the Arts⁷ The 2022 Treasury review of the Code highlighted the very specific policy purposes of the Code, which differ from the stated purposes of this Scheme. There is no current policy reason to maintain the revenue threshold in the context of this Scheme, which is not seeking to duplicate Code outcomes, and nor is that possible.

“Double-dipping” by major media

There is a broader question of why, if an organisation has successfully made commercial deals with a digital platform covered by the Incentive/Code legislation, it should also be eligible for further funding under the Statutory Payment Scheme by virtue of employing journalists. This is effectively double-dipping (or even triple-dipping if an organisation also obtained news funding under News MAP). This would reinforce large well-funded organisations at the expense of smaller organisations that play a critical role in the Australian media diversity landscape, as measured by the *Media Diversity Measurement Framework*. Under the current legislative proposal, all three platforms could conceivably do deals with the same four large news groups to meet the eligible expenditure and secure their offset, to the exclusion of all other Australian media. If however, there are funds available in the Statutory Scheme, those news groups which did deals would be “entitled” under the proposed statutory formula to significant further funding. As noted in our other submission, the draft legislation risks significantly increasing media concentration: the proposed statutory formula would further amplify this problem. This outcome is clearly contrary to stated government policy.

Our recommendations below are aimed at ensuring equitable distribution among all news organisations producing core news and meeting eligibility requirements and preventing further media concentration. There are overseas precedents for legislators considering this: e.g. in proposed US news bargaining bills, news organisations which had already made commercial deals would have those amounts excluded from collective distributions.⁸

⁵ For example, Fairfax Media was granted \$8,163,870, Nine Entertainment, \$7,962,240, West Australian Newspapers \$4,084,080, Seven Network \$5,594,160. See Australian Government Grant Connect:

<https://www.grants.gov.au/Search/KeywordSearch?keyword=journalism+assistance+fund>

⁶ Local and Independent News Association (2025, December), Submission to Treasury Consultation on News Bargaining Incentive <https://lina.org.au/wp-content/uploads/2025/12/Unsigned-LINA-submission-to-NBI-consultation-paper-1.pdf>

⁷ https://www.aph.gov.au/Parliamentary_Business/Committees/House/Former_Committees/Communications/Regionalnewspapers/Report/Section?id=committees%2Freportrep%2F024888%2F79305

⁸ See commentary and references on overseas Schemes in the CMT’s (2026) *Funding the Way Forward for Australian News*, https://www.uts.edu.au/contentassets/396e05b6bc124915a147a8ab80c82ba0/funding-the-way-forward-for-australian-news---a-review-of-local-and-international-news-funding-distribution-mechanisms_two-page-view20-feb-20.pdf

Table 1: Eligibility criteria – organisation – response to consultation questions

Question	Comments
<p>Q1 Do you have any concerns with the proposed registration and application process?</p>	<p>Subject to our recommendations under question 3 below, we support in principle the idea of a single registration requirement, if ACMA retains powers to remove registration when an organisation is no longer eligible.</p>
<p>Q3 Is the proposed eligibility criteria fit-for-purpose in ensuring that the Scheme supports continued investment in public interest news, diversity of media voices, and quality journalism</p>	<p>Yes and no. To the extent that main goal is to support organisations which invest in core news, it will broadly support those goals. However, as outlined here and above, the eligibility criteria are not fit-for-purpose:</p> <ul style="list-style-type: none"> • The revenue threshold excludes key contributors to the Australian public interest media, especially those smaller organisations that contribute to source and content diversity as identified in the <i>Media Diversity Measurement Framework</i>. This potentially exacerbates existing problems and amplifies the divide between well-resourced large organisations and smaller local news media. • The professional standards test is, as outlined in our submission on the draft legislation, inadequate in that it does not require a recognised external review body, leaving it to some (but not all) news organisations to determine their own compliance. • Double-dipping is possible under the proposal where news organisations that have already received substantial funds through the Incentive, Code or News MAP. Not only is this inequitable, but it reduces funding available through the Statutory Payment Scheme to smaller news organisations that make a critical contribution to diversity of media voices and quality journalism but risk closure.⁹ <p>To address these concerns, we make the following recommendations:</p> <p>Recommendation 1: Remove revenue threshold: This will ensure fair and equitable distribution to organisations which make a key contribution to the policy goals identified in the consultation and other Government media policy frameworks.</p> <p>Recommendation 2: Strengthen the professional standards test: As outlined in our submission on the draft legislation, the test should be tightened to require membership of an industry standards Scheme with a recognised independent complaints handling facility.</p> <p>Recommendation 3: Exclude organisations with large funding deals: Organisations that have secured funding deals and claimed an offset under the Incentive Scheme should be ineligible for funding from the Statutory Payment Scheme.</p>

5. Payment allocation formula

The CMT broadly supports the Scheme’s intent to deliver “certainty, transparency and proportionate funding” for eligible news organisations (subject to concerns raised below). We note that the measure of Full Time-Equivalent (FTE) journalists has been used in other Australian and international funding programs. Using an objective, rather than discretionary measure, helps “ensure measures are carefully designed to avoid undue influence” as noted in the *News Media Assistance Program: Government’s Role in News and Journalism Policy* (p6). However, in light of potential scenarios where this fund is significantly larger than any previous Australian news funding program and the fact that it is intended to be a long-term formulation, it is extremely important that the formula and underlying definitions are both “fit-for-purpose” and future-proofed. The speed of change in the sector in the past 5-10 years - and the impact of Generative AI, which is unfolding and yet to be fully understood - means that it is likely that any formula shift in its impact in the coming years.¹⁰

⁹ Bakan, S., (2026, February), *Business News Australia The Latest Casualty in Independent Media’s Fight for Survival*, Public Interest Journalism Initiative. <https://piji.com.au/blog/business-news-australia-liquidation/>

¹⁰ Dawson, N., Molitorisz, S. Fray, P., (2023, March) Layoffs, inequity and COVID-19: A longitudinal study of the journalism jobs crisis in Australia from 2012 to 2020, <https://doi.org/10.1177/1464884921996286>, *Journalism: Theory, Practice and Criticism*-m Vol 24, Issue 3.

Table 2: Payment allocation formula – response to consultation questions

Question	Comments
<p>Q5</p> <p>Is FTE journalists a good approximation for investment in news and journalism, and an appropriate basis for determining payments to the sector?</p>	<p>The rationale for payment allocation is sound in principle, but there are potential unintended consequences. While we broadly support this as a starting point, these concerns may be addressed by the ability to make adjustments in regulation.</p> <p>Entrenching existing concentration of the news media: A formula based on existing employment by its nature provides less opportunity for less well-resourced businesses. The MEAA has estimated that 66% of journalists work for three organisations – the ABC, News Corp and Nine,¹¹ though this may have changed significantly since the pandemic and other market changes.</p> <p>Negative impact on smaller news businesses: Given pressures on small to medium sized organisations over recent years, it is foreseeable that larger organisations may be incentivised to contract journalists from smaller organisations to scale up from this already significant percentage, preventing smaller organisations from meeting higher FTE thresholds. Smaller organisations are also more reliant on freelance journalists, which are excluded from the proposed formula.¹²</p> <p>Compromising journalist workflow: An unintended consequence for small- to medium-sized organisations without resources to employ journalists ahead of the qualifying period for the Scheme’s formula is that back-end operations may be cut to free up funds to employ journalists. This may add to journalist workload and endanger operations if journalists are distracted from core journalistic responsibilities to more administrative tasks. This may leave small businesses with no option but to remove back-end staff to facilitate journalist employment.</p> <p>Not addressing issue of short-term employment: Large organisations with the financial flexibility to scale up will do so to meet a higher-level FTE, without a guarantee of anything other than short term contracts, as occurred with the contracts that resulted from the Code.</p> <p>Recommendation 4: Allocate a share to smaller organisations and cap payments While FTE journalists is a starting point to address the above concerns, it may also be appropriate for a percentage of the fund to be set aside for distribution to smaller organisations, and consider a cap on FTE reimbursement.¹³</p>
<p>Q6</p> <p>Are the identified editorial roles clear and fit-for-purpose? Are there other roles that should be included?</p>	<p>No. The proposed definition of eligible journalist is narrow, despite inclusion of photojournalists, videographers and graphic designers. The definition does not take into account the collapse of siloed journalism in the digital era. There is no journalism production without back-end digital production. For example, in 2026 the production of a podcast often requires digital sound recordists, sound producers, sound engineers, fact checkers, roll out producers and researchers without whom there is no journalistic output. This applies across all output in all news media organisations, as all produce audio, text and video content on various news platforms as well as social media platforms, regardless of their primary purpose (radio, print, broadcast TV). News production is not feasible without digital positions in both the creative and editorial process</p> <p>Further, in the Gen AI era, where it is increasingly difficult to determine if material is factual or artificially generated, mistakes and more deliberate disinformation make it essential for news organisations to employ fact checkers. These staff are involved in the journalistic process and without them journalism doesn’t reach the public or is potentially compromised.</p> <p>Recommendation 5: Extend the definition of Eligible FTE journalists: The definition should include narrators, anchors and presenters who are journalists employed in these positions for their editorial contributions (e.g. on-air interviews). It should also include essential news production roles such as fact checkers and researchers.</p>

¹¹ O’Donnell, P. (2018) Australian Journalists At Work: Their Views on Employment, Unionization and Professional Identity, in *Freedman, E., Goodman, R.S., and Steyn, E., Critical Perspectives on Journalistic Beliefs and Actions* (pp 40-50). Routledge, <https://ses.library.usyd.edu.au/bitstream/handle/2123/19787/Freedman%202018%20Chp%203%20O%27Donnell%20final.pdf?sequence=3&isAllowed=y>

¹² For example, the Media Entertainment and Arts Alliance says 1,500 of its 5,000 members are freelancers Media, Entertainment and Arts Alliance, (n.d) *Freelancers*, https://www.meaa.org/meaa-media/freelance/?_page=3

¹³ In Canada, for example, the exemption scheme for distribution of Google funds through the Canadian Journalism Collective to news organisations under an approved formula includes caps on the percentage of fund available to broadcast sectors, and the public broadcaster. For a summary, see the CMT’s *Funding the Way Forward for Australian News* report.

5. Additional support for activities (weightings)

The CMT broadly supports the principle of weightings to more equitably distribute funds under the Statutory Payment Scheme, provided that the formula is in regulations, which would allow for flexibility and adaptation to market change and priorities. While in principle we support these categories in the current context, this is a long-term program and the landscape may change. As with the above criteria, the difficulty of setting a statutory formula for a long-term, ongoing program is its inflexibility, as it cannot be adjusted in response to change in the media environment.

Our support is also subject to our recommendation that the income threshold be removed. Many of the organisations in the sectors that the Consultation Paper (p11) identifies as needing this assistance (journalists in regional and rural areas, targeted sector diversity and news organisations serving or representing marginalised communities) are small organisations which do not meet the current Code/Incentive revenue threshold.

While the weightings suggested in the Consultation Paper refer to “small businesses” as organisations “where the corporate group reports less than \$10 million in annual revenue”, the reality of small independent news media is that many organisations operate under the proposed \$150,000 revenue threshold, and this is also the case for “news serving or representing marginalised communities”.

The weightings recognise the importance of these organisations as critical contributors to Australian media diversity, and this is another reason why the revenue threshold should not be part of the Statutory Payment Scheme.

Table 3: Additional support for activities (weightings) – response to questions

Question	Comments
<p>Q8</p> <p>Are the above weighting categories an appropriate and effective means of accounting for the economies of scale and resourcing differences across the sector; and meeting the objectives of the Statutory Payment Scheme?</p>	<p>In principle yes, subject to removing the revenue threshold in the eligibility criteria and enabling the weightings to be determined and adjusted from time to time through an evidence-based process.</p> <p>As outlined above, we are concerned that enshrining decisions about a dynamic media environment in a fixed legislative policy, will result in the risk of the formula no longer being fit for purpose over time. There needs to be a discretion to add categories or adjust weightings in response to evidence, such as the ACMA’s biennial reports against the <i>Media Diversity Measurement Framework</i> or other research produced over time.</p> <p>Recommendation 6: Set principles in legislation and formulas in regulation: To provide flexibility, future-proofing and ensure the Scheme is fit for purpose:</p> <ul style="list-style-type: none"> • Flexibility: Principles for the Scheme should be set in legislation, with formula/weightings set out in regulations and/or if appropriate, through a Ministerial determination process (based on legislative criteria); and <p>Evidence based: Categories and weightings should be determined from time to time by reference to data gathered through reporting against the <i>Media Diversity Measurement Framework</i> and other evidence of media markets.</p>
<p>Q9</p> <p>What weighting values would best achieve these aims?</p>	<p>As above. We are concerned that a fixed percentage would be inflexible and would not necessarily ensure that funds flow to where they are most needed in the longer term. To ensure the weightings remain fit for purpose, they should be reviewed after, say, three years. A one-year review was provided for the Code and the report under the review recommended a further periodic review.</p> <p>Recommendation 7: Adjust weighting values based on evidence Weighting values should be determined from time to time through regulations under the Statutory Payment Scheme, based on a statutory review which considers evidence gathered through the <i>Media Diversity Measurement Framework</i> (or comparable government policy).</p>

4. Payment conditions

The CMT has long advocated for greater transparency about the Code and now the Incentive. One of the longstanding concerns with the Code is the inability to determine if news organisations which received funds had spent them on news production or if they were redirected elsewhere in those organisations (or even to shareholders). This lack of transparency should not be carried across to a new Scheme which may potentially disburse anything from a small sum to hundreds of millions of dollars per year.

We welcome the idea of measures to “increase the likelihood that support flows to public interest news”. However, the current proposal does not achieve this aim as it limits recipient accountability to *eligibility measures*. Organisations are only required to demonstrate that they have maintained, “at a minimum, the number of eligible FTE journalists used to determine the payment”: that is, compliance with the status quo before funding was received. There is no proposed requirement - as is customary in other Australian and international grants Schemes - that funding be acquitted against the policy purposes of the program.¹⁴

While the proposed formula may incentivise organisations to employ more journalists to secure a greater share of the fund, it could just as easily enable larger organisations to simply rely on existing numbers and use the funds for any purpose, which may or may not relate to the production of core news content or even the public interest. In contrast, the government’s first statutory direct funding program for news organisations, the Regional and Small Publishers Innovation Fund (Part 13F of the *Broadcasting Services Act 1992*), required the grant agreement between the ACMA and recipient to include a condition “to the effect that the recipient will spend the amount of the grant in connection with a matter specified in the agreement”¹⁵. Fund guidelines also specified what the grants could not be used for.

Given the potential for the Statutory Payment Scheme to significantly shape and re-energise the Australian media landscape (if platforms choose to pay the Incentive, rather than do deals), it is essential that there are processes to ensure funds are in fact used for policy purposes. As Australian government revenue, funds in the Statutory Payment Scheme should be disbursed in accordance with standards for Commonwealth grants (which are also designed to ensure programs meet their policy purposes).

This issue also affects compliance powers: if the Department’s preferred approach is adopted, its compliance powers will be extremely limited, comprising only an audit of the status quo, rather than determining whether funds are used to further the production of core news as is the policy intention of the Statutory Payment Scheme.

We strongly recommend that for the integrity of the Scheme, payment conditions must require that funds from the Statutory Payment Scheme be used for the purposes of core news production and that grants of funding are subject to acquittals and attestations, as is standard in most grants processes and compliance powers extend to investigating the proper use of expenditure.

As currently proposed, there is an incentive to invest funds received in journalist employment (as it increases an organisation’s share of the fund under the proposed formula) but an *incentive* is very different to a verified *guarantee* that funds are spent for those purposes.

¹⁴ See examples in the CMT’s *Funding the Way Forward for Australian News*.

¹⁵ Section 205ZJ (4) BSA.

Table 4: Payment conditions - response to consultation questions

Question	Comments
<p>Q10</p> <p>Is the proposed retention obligation an appropriate measure to ensure that funding provided to the sector delivers against a clear and valid public purpose?</p>	<p>No. Retaining records of existing employment prior to funding does not ensure that funds disbursed have been used for a “clear and valid public purpose”. This is why there should be obligations on recipients to demonstrate that their use of funds goes towards the policy purposes of the Scheme, e.g. for the “production of core news”, as is customary in most government-managed and independently managed grants Schemes.</p> <p><i>Production of core news</i> may be defined to include the employment of journalists (as defined), support staff and other administrative costs directly connected to news production. The formulation should address the policy purposes of the legislation – this means that the expenditure criteria does not need to be a mirror copy of the eligibility criteria. It should still substantially involve expenditure on journalists and related staff but could also cover training, technical requirements (e.g. AI detection software) directly involved with and relevant to the production of core news.</p> <p>By way of comparison, the Canadian news bargaining Scheme contains requirements around the use of expenditure, both with the bargaining agreements and for the distribution fund established where a platform has obtained an exemption based on a single agreement to provide equitable compensation. Similarly, in proposed US state news bargaining bills, news organisations would be required to publish attestations that they have used funds for policy purposes. These include some flexibility, so that even if eligibility is determined by journalist FTE, expenditure requirements are not tied to that but to the broader policy goals of each Scheme:</p> <ul style="list-style-type: none"> • Canada: Section 7 of regulations under the <i>Online News Act</i> defines requirements that monetary compensation “is used for the production of local, regional and national news” as being met if a <i>majority</i> of funds received support creation of such content. This preserves flexibility for news businesses while meeting policy purposes. • US states: Bills in California, Oregon and Illinois proposed news organisations which received payments under hybrid news bargaining Schemes were required to spend 70% on news journalist and support staff (50%) for smaller news businesses. example: 70% spent on news journalists and support staff (50% in the case of smaller news businesses.¹⁶ <p>In the case of the proposed Statutory Payment Scheme, policy purposes will be met if news organisations spend on FTE journalists as well as more broadly on the production of core news.</p> <p>Recommendation 8: Require funds be used for core news production: Payments under the Statutory Payment Scheme should be subject to a requirement for the recipient to attest that they have used the funds for the purpose of <i>production of core news</i> and to retain relevant records and recipients should be otherwise required to comply with standard Commonwealth government grant agreements.</p>
<p>Q12</p> <p>What penalties should apply for organisations that are later found to have mis-reported their eligibility or employment practices?</p>	<p>Under the standard Commonwealth General Grant Conditions (Clause 9) grantees must agree to spend funds for specified purposes, provide signed verification that spending was in accordance with the agreement, and (under Clause 10) repay amounts spent other than in accordance with the agreement. Some Schemes provide for temporary or permanent ineligibility for non-compliance.</p> <p>Recommendation 9: Impose penalties where funds are not spent as required: Compliance obligations should apply not only to reporting of eligibility and employment practices but also to the manner in which funds are spent; where necessary, penalties should apply across each of these categories to ensure the integrity of the Scheme.</p>

¹⁶ These and other examples are covered in Section 4.2 (Canada) and Section 4.3 (United States), of the CMT’s *Funding the Way Forward for Australian News* report.

5. Administration of the Scheme

The CMT supports the preferred approach of regular reporting and notification of change. However, as recommended, the reports should attest that funds were used for the Scheme’s purposes, as is common practice in grant funding, including recent News MAP funding. Formal reports should include any instances of non-compliance. The CMT also supports transparency in the operation of the Scheme and alignment with the News MAP policy framework. One of the ongoing concerns with the Code was that the bargaining deals were opaque. In the CMT’s submission to the 2025 NBI consultation, we challenged the suggestion that it would not be appropriate to require those who make deals to attest that funds were spent on intended purposes – overseas examples show this can be done.

The CMT continues to argue that, to meet public policy purposes, attestation requirements should apply across both the Scheme and the Incentive/Code.

Table 5: Administration of the Scheme – responses to consultation questions

Question	Comments
<p>Q13</p> <p>Do you have any concerns about the general approach to regular reporting and an event-based notification framework?</p>	<p>We agree in principle with regular reporting and transparency.</p> <p>As above, Part 13F of the BSA included obligations in grant agreements that “the recipient will spend the amount of the grant in connection with a matter specified in the agreement”. Section 205ZZL BSA required the ACMA to include specific information in its annual reports, such as recipient names, total amount of grants received and the purpose of each grant. (Regular reporting would be incorporated in the evidence base for periodic reviews of the Scheme, as recommended above, in conjunction with evidence collected in relation to the <i>Media Diversity Measurement Framework</i>.)</p>
<p>Q15</p> <p>Do you have any concerns or views about penalties under the Scheme, including the thresholds and penalties for serious non-compliance</p>	<p>As outlined in recommendations above, there should be investigatory and audit powers not only in relation to eligibility and compliance with any other threshold requirements, but also so that funds are being used in line with the main purpose of the Scheme, which is for core news production. These powers should mirror the types of powers available under other news and cultural grants Schemes in Australia.</p> <p>Given that <i>supporting social cohesion</i> is a policy goal of this initiative, a further area not covered in the Consultation Paper but which may be relevant to consider is whether organisations which seriously and repeatedly breach their own professional standards - as assessed by their own complaints body - or breach laws relating to social cohesion, such as hate speech laws, should be excluded from participating in this fund temporarily or otherwise. Under guidelines for existing Australian news funding Schemes, such as the Journalism Assistance Fund, news organisations are already excluded from eligibility if they have not complied with certain legislative or regulatory requirements (e.g. National Redress Scheme, <i>Workplace Gender Equality Act</i> (2021)).</p> <p>International precedents include the Austrian <i>Journalism Subsidies Act 1984</i>, which can exclude applicants if their media have been used to incite violence or repeatedly urge disregard for the law, repeatedly incite hatred or violence against individuals or groups on protected grounds such as race, ethnicity, religion, sex, disability or sexual orientation.</p> <p>The government may consider including appropriate measures in eligibility (and compliance) requirements. A procedure could be developed that draws on the approach under the “suitability” requirement for broadcasting licences in s41 of the <i>Broadcasting Services Act</i>. For example, a news business would be deemed to be suitable unless the decision-maker is satisfied that it is not, having regard to the record of the news business in upheld breaches of the standards scheme.</p>
	<p>Recommendation 10: That penalties be consistent with those used in standard Commonwealth grants agreements, and where appropriate include temporary or permanent loss of eligibility.</p> <p>Recommendation 11: Link compliance to standards: There should be consideration of whether repeated breach of an organisation’s own professional standards or relevant laws should be subject to compliance penalties.</p>

6. Summary of the CMT's recommendations

The CMT supports the intention of the Statutory Payment Scheme in principle but believes that there are significant aspects of its design which need to be addressed to ensure it is fit for purpose, flexible and futureproofed. It should work in an aligned way with the Incentive, Code and News MAP and address problems and shortcomings that have been identified over a number of years in a range of policy processes.

Recommendation 1: Remove revenue threshold: This will ensure fair and equitable distribution to organisations which make a key contribution to the policy goals identified in the consultation and other Government media policy frameworks.

Recommendation 2: Strengthen the professional standards test: As outlined in our submission on the draft legislation, the test should be tightened to require membership of an industry standards Scheme with a recognised independent complaints handling facility.

Recommendation 3: Exclude organisations with funding deals: Organisations that have secured funding deals and claimed an offset under the Incentive Scheme should be ineligible for funding from the Statutory Payment Scheme.

Recommendation 4: Allocate a share to smaller organisations and cap payments: While FTE journalists is a starting point to address the above concerns, it may also be appropriate for a percentage of the fund to be set aside for distribution to smaller organisations, and consider a cap on FTE reimbursement.

Recommendation 5: Extend the definition of Eligible FTE journalists: The definition should include narrators, anchors and presenters who are journalists employed in these positions for their editorial contributions (e.g. on-air interviews). It should also include essential news production roles such as fact checkers and researchers.

Recommendation 6: Set principles in legislation and formulas in regulation: To provide flexibility, futureproofing and ensure the Scheme is fit for purpose:

- **Flexibility:** Principles for the Scheme should be set in legislation, with formula/weightings set out in regulations and/or if appropriate, through a Ministerial determination process (based on legislative criteria); and
- **Evidence based:** Categories and weightings should be determined from time to time by reference to data gathered through reporting against the *Media Diversity Measurement Framework* and other evidence of media markets.

Recommendation 7: Adjust weighting values based on evidence: Weighting values should be determined from time to time through regulations under the Statutory Payment Scheme, based on a statutory review which considers evidence gathered through the *Media Diversity Measurement Framework* (or comparable government policy).

Recommendation 8: Require funds be used for core news production: Payments under the Statutory Payment Scheme should be subject to a requirement for the recipient to attest that they have used the funds for the purpose of *production of core news* and retain relevant records and recipients should be otherwise required to comply with standard Commonwealth government grants agreements.

Recommendation 9: Impose penalties where funds are not spent as required: Compliance obligations should apply not only to reporting of eligibility and employment practices but also the manner in which funds are spent, where necessary, penalties should apply across each of these categories to ensure the integrity of the Scheme

Recommendation 10: Penalties should be consistent with those used in standard Commonwealth grants agreements, and where appropriate include temporary or permanent loss of eligibility.

Recommendation 11: Link compliance to standards: There should be consideration of whether repeated breach of an organisation's own relevant professional standards should be subject to compliance penalties.

Thank you for considering the matters raised in this submission. Please contact the CMT if you want to discuss or require any further information.

Appendix 1

CMT Submission to Treasury, *News Bargaining Incentive: Draft Legislation*, May 2026.



NEWS BARGAINING INCENTIVE – DRAFT LEGISLATION

UTS Centre for Media Transition submission to Treasury

May 2026

About the Centre for Media Transition

The Centre (CMT) was established in 2017 as an applied research unit based at the University of Technology Sydney (UTS). It is an interdisciplinary initiative of the Faculty of Design and Society and the Faculty of Law, sitting at the intersection of media, journalism, technology, ethics, regulation and business.

Working with industry, academia, government and others, the CMT aims to understand media transition and digital disruption, with a view to recommending legal reform and other measures that promote the public interest. In addition, the CMT aims to assist news media to adapt for a digital environment, including by identifying potentially sustainable business models, develop suitable ethical and regulatory frameworks for a fast-changing digital ecosystem, foster quality journalism, and develop a diverse media environment that embraces local/regional, international and transnational issues and debate.

This submission was prepared by

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Executive Summary

This submission evaluates the proposed News Bargaining Incentive (NBI) legislation, building on our earlier feedback regarding the News Media Bargaining Code (NMBC). While the NMBC successfully generated significant funding for Australian news organisations, the Centre for Media Transition (CMT) has consistently identified major structural weaknesses. We have also questioned the NMBC's underlying regulatory model, which focuses on compensating news businesses for content use. Instead, we advocate a broader obligation on digital platforms to contribute financially to the health of the information ecosystem, similar to obligations in telecommunications and broadcasting sectors.

The proposed NBI introduces some improvements, notably a 2.25% levy on Australian revenue and incentives through offsets of up to 170% for qualifying expenditure. While we agree these serve as incentives, they do not *guarantee* policy objectives will be met.

For these reasons, the CMT does not support the NBI in its current form. Our central concern is that the commercial deals pathway could drastically narrow funding distribution and lead to increased concentration in the Australian media. With a requirement for platforms to enter as few as four agreements, funding could be concentrated among a small number of large media companies, excluding smaller and regional publishers. We believe this can however be addressed in a simple way by requiring a baseline number of deals to claim the offset. Taken together with the Incentive, this is more likely to deliver a comparable spread and number of deals as the News Media Bargaining Code, which we understand is the policy intention.

Other concerns include the narrow definition of eligible expenditure, which excludes broader 'additional expenditure' such as contributions to independent industry funds. Allowing such contributions could broaden support for public interest journalism while reducing administrative complexity and government proximity. The NBI proposal is also poorly aligned with existing media policy as the Statutory Payment Scheme is likely to result in the same large media companies being first in line under both Schemes (and potentially double-dipping), to the disadvantage of smaller and regional news businesses. This is likely to further compound media concentration and undermine media diversity.

The draft legislation's reliance on commercial agreements effectively replaces, yet entrenches, the NMBC. The CMT argues that this hybrid approach is unnecessarily complex and inequitable.

Our preferred alternative is to abolish the NMBC and remove the commercial deals option entirely. Instead, the mandatory levy could be used to distribute funds independently to all eligible news organisations. This model would be simpler, fairer, and more predictable.

However, if the Incentive proposal proceeds, **we believe that the addition of a baseline requirement for a minimum number of deals or a sliding scale that sees the number of required deals increase in proportion to the Australian revenue of the platform, in addition to current requirements in cl 20, would promote a reasonable level of diversity that more closely reflects what was achieved under the NMBC.**

We **recommend** the following amendments (and others summarised in the conclusion):

- expand the scope to include AI companies;
- broaden eligible expenditure to include industry-based public interest journalism funds;
- preserve the cap in 20(d) but increase the minimum number of deals required to claim the offset to, say 15-20 (or use a sliding scale based on platform revenue);
- remove income thresholds that are currently a barrier for smaller but critically important media organisations;
- mandate registration of qualifying news businesses with the ACMA;
- tighten eligibility and professional standards requirements;
- mandate use of funds for the production of core news, and include obligations for news organisations to attest compliant use;
- improve transparency through reporting obligations and public registers; and
- include a formal review and evaluation mechanism.

Part A: Comments on overall design

Thank you for the opportunity to make this submission on the draft legislation for the News Bargaining Incentive (NBI). It should be read in conjunction with our submission to the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts on the design of a Statutory Payment Scheme set out in *News Bargaining Incentive – Consultation on Revenue Distribution* (the Distribution Paper).

The Centre for Media Transition supported the implementation of the News Media Bargaining Code (NMBC) in 2021 on account of its potential, since realised, to raise significant funds for Australian news businesses. Despite this support, we have consistently noted structural weaknesses with the design of the NMBC, including:

- its failure to support a number of smaller news businesses;
- the absence of any transparency and reporting requirements, leaving the government, industry and the community without even a top-level account of the value of deals made between platforms and news businesses;
- the failure to impose any obligations on news businesses as to how the funds could be spent;
- the missed opportunity to help maintain media standards and build trust by requiring beneficiaries of this government intervention to sign up to an industry standards Scheme with an independent complaint-handling facility; and
- the failure more generally to tie the Scheme to the public interest, and to public interest journalism.

More fundamentally, we questioned the choice of regulation - specifically, the decision to enact a mandatory bargaining model based on remuneration for the use by platforms of news content. Government at the time favoured that approach over a form of regulation that would require digital platforms – as key participants in the contemporary information environment – to contribute to the overall health of that information environment by financially supporting those who actually produce the journalism we rely on. This is the approach used when requiring telecommunications companies to support the costs of making services available in regional and remote areas, and in requiring pay TV and streaming services to support the costs of making Australian content.

Having now reviewed the design of the proposed NBI, we can identify some advances that it makes on the NMBC. We support, for example, aspects of the design of the charge, including the proposal to set it at 2.25% of Australian revenue, and to allow offsets at the rate of 150% or 170%. In the table below, we present some suggested amendments to other aspects, such as which services it applies to.

On balance, however, we think the prospect of the commercial deals component of the NBI Scheme drastically reducing the number of recipients of platform funding (from an estimated 30-40 to four) means that we cannot support the NBI in its current form. As outlined below, we believe this can be addressed with the addition of a baseline requirement for numbers of deals required to claim the offset.

Problems with current design

These are the main points of our objection to the current proposal:

1. **Concentration of recipients:** The mechanism that effectively ensures that a single platform must, if it elects the commercial deals option, make at least four such deals is grossly inadequate. The draft legislation restricts the Scheme's application to apply to three platforms (Google, Meta and TikTok); each of these platforms could potentially limit its four deals to the same four larger news businesses, or a small number of additional businesses. With an estimate of \$300 million to be raised by the Scheme, the worst case scenario is that the four largest news businesses are the recipients of \$75 million each, while other news providers receive nothing.

2. **Narrowness of 'eligible expenditure':** The 'incentive' side of the Scheme – that is, the part that encourages payments by platforms in order to avoid the charge – fails to embrace the full scope of appropriate 'additional expenditure', as suggested in the 2025 Consultation Paper. Instead, the Scheme prescribes that commercial deals must be for the production of news by a news business or for the distribution of news on a service. Allowing platforms to claim some additional expenditure could facilitate payments to independent industry funds that support local public interest news – as is the case with Google's contributions to the Canadian Journalism Collective – ensuring greater independence from platforms than is the case with private agreements between platforms and news businesses. Contributing funds to an independent industry fund may even have some advantages over a Statutory Payment Scheme supported by a levy, as the industry Scheme also provides distance between platforms and news businesses on the one hand and government on the other, while also offering potential cost savings over a distribution Scheme run by government.
3. **Policy alignment and double-dipping:** The Scheme as set out in the draft legislation fails to neatly connect with the policy underlying the other side of the government's plan – the distribution arrangements set out in the consultation paper published by the Department of Communications – as well as other government policy. The NBI could allow for commercial deals to be made with a very small number of large media organisations, while the proposed distribution mechanism – the Statutory Payment Scheme, which is based on the number of journalists employed – could place these same companies at the head of the queue for any funds to be distributed as a result of the charge collected, resulting in 'double-dipping'. As some of these organisations have also accessed substantial funds under the News Media Assistance Program (News MAP) Journalism Assistance Fund, this could even effectively be 'triple dipping'. These are competitive processes, so the allocation of funds to a concentrated few removes access for smaller organisations that are critical to the diversity of Australia's media landscape, as measured by the government's Media Diversity Measurement Framework, which is an anchor point for news support policies. This undermines the potential impact of the proposed weightings process in the Statutory Payment Scheme.
4. **Lack of clarity on the purpose of retaining the NMBC:** The Incentive Scheme entrenches the News Media Bargaining Code, at the same time as rendering it largely redundant. The 'carrot' factor – encouraging voluntary agreements rather than formal, regulated arrangements – is now supplied by the threat of the levy being imposed in the absence of commercial deals being made under the NBI Scheme. This is a superior mechanism to a discretion being given to the Treasurer to 'designate' a company that has not made a significant contribution to the sustainability of the Australian news media, but it raises a question of what purpose the existing NMBC provisions in Part IVBA of the Competition and Consumer Act (CCA) serve and whether there is potential for future confusion or inconsistency in the application of the two Schemes.

Proposed solutions

Levy alone: We believe the simplest and most effective Scheme would be to repeal the NMBC, remove the commercial bargaining component and have the mandatory levy proceed as the sole regulatory measure – 'News Media Levy' or 'Public Interest Journalism Charge'. Funds raised by levy would be distributed by an arm's length body to eligible news media businesses.

We understand stakeholders of various types would prefer such an arrangement, for its certainty, simplicity and fairness.

As part of this approach, key provisions of the NMBC such as the 'core news' test could be retained and imported into the levy legislation, and the professional standards test could be bolstered. Indeed, the new levy Scheme could actively advance the development of a new, cross-platform media standards Scheme as a funding requirement for news businesses.

Incentive with baseline deal threshold: Having advanced arguments for a simpler levy and distribution approach, we also recognise government is likely to proceed with at least the core features of the Scheme presented in the draft legislation.

We are also aware of the restrictions that could arise from trade relations with the US, and acknowledge these as valid concerns, and that the 'Incentive' aspect to do deals may help overcome this.

Accordingly, we provide comments below on practical improvements to the structure outlined in the draft legislation. All will contribute to delivering on the government's stated policy goals of sustainability and diversity.

Possibly the most critical is our proposed additional requirement in clause 20 for each platform to enter into a baseline number of deals or for a sliding scale of the minimum number of deals, which increases with the size of the charge payable.

According to Treasury's one-year review of the NMBC, at least 43 deals were achieved.¹ By setting a baseline of, say, 15-20 deals per platform, it can be assumed that even if multiple platforms did deals with some of the same news organisations, the Scheme would be much more likely to achieve an overall number of deals closer to the NMBC outcome versus the current proposed structure, which allows for the offset to be satisfied with only four groups having achieved deals. The sliding scale approach could be even more equitable.

The proposed baseline or sliding scale would work in alignment with the cap in clause 20(d), because it is still good policy to cap an individual deal at 25% of the total expenditure. It would also enhance the effectiveness of the Incentive by further encouraging deals with news businesses of diverse sizes.

Even though this will result in a more complex Scheme than the levy alone, the amendments we propose – particularly the addition to clause 20 of a mechanism for increasing the number of deals – would help the Scheme more likely deliver on the government's stated policy goals of sustainability and diversity, and avoid the current proposal's risks of increased concentration and exclusion of a large part of the Australian media.

Whether as part of the levy approach or as part of the proposed NBI Scheme, the new legislation should contain clear objectives. A simple way to do this is to repurpose a key feature of the NMBC, by turning the test in section 52E of the CCA - that a platform has made '*a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses*' – into a legislative objective.

¹ Treasury (November 2022). *News Media and Digital Platforms Mandatory Bargaining Code: The Code's First Year of Operation*, p.5.

Part B: Comments on the draft legislation

The table below sets out our responses to certain provisions in the draft News Media Bargaining (Administration) Bill 2026 (the Administration Bill). We have no comments on the News Media Bargaining Charge Bill 2026 or the Treasury Laws Amendment (News Media Bargaining) (Consequential) Bill 2026.

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Scope – definitions of ‘social media service’ and ‘search service’; criteria for qualifying as a ‘significant’ service 	<ul style="list-style-type: none"> 7 – to be ‘significant’, social media services must have 5 million active Australian users, while search services must have 10 million active Australian users 8(3)(d) – services that ‘have the sole or primary purpose of enabling end-users to engage in professional networking or professional development services’ are excluded from the definition of ‘social media service’ 9 – large language models are excluded from the definition of ‘search service’ 	<p>Issue</p> <p>Where the provider of ‘professional networking or professional development services’ would otherwise qualify under subclause 8 (1) <u>and</u> the service is a significant social media service under clause 7 (ie, at least 5 million users) <u>and</u> the parent entity would come within the revenue test in clause 13 (ie, Australian revenue in excess of \$250m per year), the service <i>should</i> be within scope of the NBI.</p> <p>The rationale for the exclusion of LLMs is not apparent. In contrast, the rationale for including social media services is that they are ‘services that currently have the potential to significantly benefit from the provision of news media content’. Surely this applies also to AI-driven services? As large language models are trained on news and draw on news in offering responses to users, it is important that they be included within scope for the NBI. The potential commercialisation of AI, be it from subscriptions or advertising, will depend on news as much as ordinary search does. In addition, it is likely that AI will become more integrated into search; if this reaches the point where a search service ‘primarily uses’ an LLM, the service will be excluded. At a minimum, the partnering of AI with search should be accounted for in the definitions of ‘search’ service and ‘significant’ service.</p> <p>Recommendation 1: Amend the definition to include AI search services; or remove the explicit exclusion of LLMs and require a review to be completed within 12 months and give the Minister power to declare this as an included service.</p> <p>Issue</p> <p>7.1(a) enables the Minister to make rules to prescribe services that are exempt from being a significant social media or search service. It is not clear why the Minister’s power is currently limited. The ability to adjust the definition is limited to exempting, not <i>including</i>. As technologies are changing, it may be appropriate to adjust the definition to be inclusive.</p> <p>Recommendation 2: In order to help futureproof the legislation, amend 7.1(a) to enable the Minister to include certain services in the definition of significant social media or search service.</p>

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Base for the calculation of the charge 	<ul style="list-style-type: none"> 10 & 14 – the charge is based on the platform's parent entity's consolidated revenue for Australia 	<p>Issue</p> <p>The charge is applied to a corporate group where a significant social media or search service is part of the group, including where this service is just one part of the group's operation. This means that for some platforms the charge will be almost entirely based on the revenue derived from the search or social media service, whereas for others the bulk of the revenue base may be attributable to services and products other than the search or social media service – eg, cloud storage. There is a lack of coherence in this approach.</p> <p>Further consideration could be given to the exclusion of some products and services (eg, a mobile phone business) unrelated to the search or social media business, or the inclusion of other participants. This is an additional argument for including AI businesses – whether they are discrete AI companies, or AI services offered in conjunction with search and social media services. Again, these would only be in scope if they satisfied the revenue and other tests mentioned above.</p> <p>Recommendation 3: Reconsider the range of products and services – which currently includes a mobile phone business – that provide the revenue base; include AI services.</p>

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Eligible expenditure – what can be claimed to offset the charge 	<ul style="list-style-type: none"> 18 & 19 – the charge can be offset by expenditure via (i) commercial deals that help meet a news business's news production costs, or the costs of making news available on the platform, or (ii) arbitration outcomes under the News Media Bargaining Code 20(1)(d) – the maximum offset claimable with respect to a single news business corporate group is one quarter of the total charge payable 	<p>Issue</p> <p>The allowance for expenditure on news production or distribution costs is too limited. As we explained in our submission to the Consultation Paper, based on the research for our recent report, <i>Funding the Way Forward for Australian News</i>, there should be allowance for 'other expenditure' by the platform – specifically, for contributions made to an independent industry fund. Such funds would need to comply with conditions specified by statute and/or regulations and their funding formulas would need to align with media policy. This would be an alternative fund to the levy fund (ie, that established as part of the Statutory Payment Scheme described in the Distribution Paper). As outlined in our submission to the December 2025 Treasury consultation, experience here and overseas shows this is likely to be a preferred option for platforms, offering independence from government and the platform itself.</p> <p>This would also enable a far greater range of news businesses to be supported than would be the case under commercial deals, while allowing the 150% and 170% offset benefits in cl 20 to be applied to participants who choose this option.</p> <p>Recommendation 4: Include designated 'industry funds' which meet specified criteria in the definition of eligible expenditure.</p> <p>Issues</p> <p>The provision in 20(d)(1) enabling platforms to do as few as four deals risks significantly increasing media concentration and should be amended to meet the diversity goals of the policy underlying this legislation. This could be achieved by requiring a minimum number of deals before the offset can be claimed through the addition of a baseline number of deals required.</p> <p>Imposing a baseline by requiring a minimum of, say, 15-20- deals, or establishing a minimum number of deals based on a sliding scale with reference to the Australian revenue of the platform, would mean there is a much greater likelihood of the total number of deals done by the three platforms to reach roughly the number achieved under the NMBC, or even more. This would much more effectively contribute to diversity and sustainability goals than the current proposed provision, which could concentrate \$200-300m or more in the hands of four large media groups and shut out dozens of businesses that had successfully done deals under the NMBC.</p> <p>If the intention is to fix issues with the NMBC, the Scheme should at least aim to preserve the level of diversity achieved by that Scheme and not result in further media concentration.</p> <p>This also provides greater certainty that the legislation will deliver on its goals than an incentive alone.</p> <p>Recommendation 5: Amend clause 20 with the addition of a new subclause (e) which requires either: a minimum of 15-20 deals be done by each entity claiming the offset; or a sliding scale prescribing the minimum number of deals, which increases in proportion to the size of the charge payable.</p>

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Beneficiaries - parties to commercial agreement with a platform or a determination under the NMBC 	<ul style="list-style-type: none"> 6, 11(1), 18(c), 19(d) – definitions; meaning of news business corporate group; expenditure under commercial deals with Australian news media businesses; expenditure under arbitrated agreements with Australian news media businesses 	<p>Issue</p> <p>Clause 6 incorporates into the Administration Act the tests for 'news business' under the NMBC. The recipient of the funding must be registered with the ACMA to be the subject of an arbitration decision under the NMBC, but 11(1)(b) allows for the party to a commercial deal under 18 to 'otherwise' meet the same requirements in the NMBC without actually being registered. These requirements are that it passes the content test, the Australian audience test, the professional standards test, and the revenue test.</p> <p>CMT, along with many other contributors to policy development on the NMBC and the NBI, have repeatedly said that aspects of these tests should be amended. Foremost among the flaws in the current regime are:</p> <ul style="list-style-type: none"> The revenue test is overly restrictive and should be lowered to allow for admission of small news providers whose annual revenue is less than \$150,000; and The professional standards test is overly lenient and should be tightened to require membership of an industry standards Scheme with an independent complaints handling facility. <p>The exemption in 11(1)(b) that allows for news organisations to be parties to commercial deals without being registered with the ACMA should be removed. Registration provides quality control, transparency, and a mechanism for review conducted by the media regulator which has considerable experience in this area. Allowing another (unnamed) entity to be the decision-maker on whether the news organisation passes the four tests, even if on the advice of the ACMA, is undesirable, unnecessary and inequitable to other media organisations. Even if smaller news organisations are admitted to the Scheme through a lowering of the revenue threshold, the work needed to complete registration is a reasonable regulatory obligation imposed on a business that will be the recipient of funds awarded via this legislative intervention. The same applies to membership of an independent standards Scheme.</p> <p>Recommendation 6: Lower or remove the revenue test for the purposes of the Incentive, enabling platforms to negotiate with a broader range of news organisations.</p> <p>Recommendation 7: Amend the professional standards test to require membership of an industry standards Scheme with an independent complaints handling facility.</p>

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Use of funds 	<ul style="list-style-type: none"> New part 	<p>Issue</p> <p>There should be obligations imposed on news businesses in relation to how the funds obtained through this Scheme are used – namely, that they are used for some purpose directly associated with the production of journalism.</p> <p>Such accountability provisions have been included, for example, in draft news bargaining bills introduced by legislators in several US states. We address this point further in our submission on the Distribution Paper.</p> <p>Recommendation 8: Amend the legislation to include requirements that news businesses spend funds under agreements on the production of core news. This could be achieved through a direct obligation on news businesses or through requirements on platforms claiming eligible expenditure to obtain annual attestations from those news businesses. Further, compliance information should be made public.</p>
<ul style="list-style-type: none"> Transparency 	<ul style="list-style-type: none"> Part 6 	<p>Issue</p> <p>If commercial deals are allowed and the NMBC remains, the Scheme should require both parties to a commercial agreement under clause 18 as well as the parties who, under clause 19, are the subject of a determination under the NMBC, to notify the ACMA, the ACCC or the ATO of key aspects of these arrangements. As has been noted repeatedly, deals made under the NMBC contained strict confidentiality clauses, and there is no accurate record of even the total funding made available through the NMBC.</p> <p>In its one-year review, Treasury was forced to rely on submissions from stakeholders and an estimate of the total funding published in the media. The regulator should have statutory powers to require the production of this information.</p> <p>At least some aspects of this information should be made publicly available in a statutory register.</p> <p>To ensure alignment with media policy and to inform related government news support Schemes, the relevant regulator should publish, based on data supplied to them for the purposes of gaining the offset: names of the parties to deals; the total amounts of deals done; and specific analysis including, for instance, how many deals were struck with smaller, regional, rural and diverse outlets.</p> <p>Recommendation 9: Amend the legislation to give the relevant regulator powers to require the production of information and include a requirement that the relevant regulator report on specified matters.</p>

Provision	Clause in draft Bill	Comments
<ul style="list-style-type: none"> Legislative objectives, review and evaluation 	<ul style="list-style-type: none"> New 	<p>Issue</p> <p>The Incentive Scheme, along with the Statutory Payment Scheme will potentially inject hundreds of millions of dollars into the Australian media for the production of public interest news that services critical policy purposes as articulated by the government. It is intended as an ongoing tool for critical funding support over the long term.</p> <p>The purpose of this policy could be underlined by importing as a legislative objective part of the test in section 52E of the CCA: that platforms make 'a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses'.</p> <p>Both the Incentive Scheme and the Statutory Payment Scheme legislation should provide for a periodic review and evaluation process to ensure they are meeting policy purposes, as was provided for in the NMBC legislation. The government's report on the NMBC recommended a further review.</p> <p>Recommendation 10: Amend the draft legislation to include a legislative objective concerning the sustainability of the Australian news industry and require review and evaluation after two years and periodic reviews after that.</p>
<ul style="list-style-type: none"> Notification of controllers 	<ul style="list-style-type: none"> Part 5 	<p>Issue</p> <p>The Scheme should require both parties to a commercial agreement under clause 18 and the parties who, under clause 19, are the subject of a determination under the NMBC, to notify the ACMA of persons in a position to exercise control of each news business and then to notify the ACMA of changes in control (similar to s 63 of the <i>Broadcasting Services Act</i>).</p> <p>The ACMA should be required to establish a new register or, preferably, overhaul and adapt the Media Control Database as a statutory register, to publicly record this data. This will:</p> <ul style="list-style-type: none"> support the anti-avoidance provisions in Part 5 by allowing the ATO to refer to an established dataset when determining the service group of a digital platform and a news business corporate group; align the Scheme with other developing government policy – namely, the mapping on media diversity now being undertaken by the ACMA in accordance with News MAP and the Media Diversity Measurement Framework. <p>Recommendation 11: Amend the legislation (or other legislation as appropriate) to require notifications of control and the establishment of a statutory register of this information.</p>

Part C – Conclusion and recommendations

The proposed Incentive Scheme provides an excellent opportunity to address the acknowledged shortcomings of the News Media Bargaining Code and provide a durable long term contribution to the sustainability of businesses producing public interest news in support of democracy and social cohesion. These purposes, along with an acknowledgement of market failure, have been well articulated by the government.

It is critical that new Incentive Scheme does not inadvertently result in a reduction of diversity and increased concentration, and that it does not entrench inequities, including against smaller news media that are critical contributors to the rural and regional news, where there is the greatest risk of news deserts.

This legislation needs to be considered in the context of related measures such as the Statutory Payment Scheme and the News Media Assistance Program. The policy purpose of the three must be aligned to ensure that the goals articulated in the government's Media Diversity Measurement Framework are served, rather than undermined.

As stated in Part A, our preferred approach is to dismantle the News Media Bargaining Code and to replace the proposed News Bargaining Incentive Scheme with a statutory levy. However, recognising this approach is unlikely to be accepted by government, our suggestions for amendments to the Incentive, and the Statutory Payment Scheme (as outlined in the Appendix) are directed at achieving sustainability coupled with diversity via equitable access to these related Schemes for organisations that are best placed to deliver the type of public news that is essential for our democracy.

Summary of recommendations for amendments to the draft legislation

Recommendation 1: Amend the definition to include AI search services; or remove the explicit exclusion of LLMs and require a review to be completed within 12 months and give the Minister power to declare this as an included service.

Recommendation 2: In order to help future proof the legislation, amend 7.1(a) to enable the Minister to include certain services in the definition of significant social media or search service.

Recommendation 3: Reconsider the range of products and services – which currently includes a mobile phone business – that provide the revenue base; include AI services.

Recommendation 4: Include designated 'industry funds' which meet specified criteria in the definition of eligible expenditure.

Recommendation 5: Amend section 20 with the addition of a new subsection (e) which requires either: a minimum of 15-20 deals be done by each entity claiming the offset; or a sliding scale of the minimum number of deals, which increases with the size of the charge payable.

Recommendation 6: Lower or remove the revenue test for the purposes of the Incentive, enabling platforms to negotiate with a broader range of news organisations.

Recommendation 7: Amend the professional standards test to require membership of an industry standards Scheme with an independent complaints handling facility.

Recommendation 8: Amend the legislation to include requirements that news businesses spend funds under agreements on the production of core news. This could be achieved through a direct obligation on news businesses or through requirements on platforms claiming eligible expenditure to obtain annual attestations from those news businesses. Further, compliance information should be made public.

Recommendation 9: Amend the legislation to give the relevant regulator powers to require the production of information and include a requirement that the relevant regulator report on specified matters.

Recommendation 10: Amend the draft legislation to include a legislative objective concerning the sustainability of the Australian news industry and require review and evaluation after two years and periodic reviews after that.

Recommendation 11: Amend the legislation (or other legislation as appropriate) to require notifications of control and the establishment of a statutory register of this information.