

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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

Schedule of the amendments made by the Senate

- (1) Schedule 1, item 1, page 8 (lines 10 to 13), omit subsection 52E(3), substitute:
 - (3) In making the determination, the Minister must consider:
 - (a) whether there is a significant bargaining power imbalance between Australian news businesses and the group comprised of the corporation and all of its related bodies corporate; and
 - (b) whether that group has made a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses (including agreements to remunerate those businesses for their news content).
- (2) Schedule 1, item 1, page 8 (after line 15), at the end of section 52E, add:
 - (5) Before making the determination, the Minister must give the corporation notice in writing that the Minister intends to make a determination under subsection (1) specifying the corporation and a particular service or particular services.
 - (6) The Minister must not make the determination before the end of the period of 30 days starting on the day on which the notice under subsection (5) is given.
- (3) Schedule 1, item 1, page 24 (after line 3), at the end of section 52ZC, add:
 - (4) Subsection (2) does not apply in relation to differentiation if:
 - (a) there is an agreement between:
 - (i) the responsible digital platform corporation, or a related body corporate of the responsible digital platform corporation; and
 - (ii) a corporation that is registered (or is eligible to be registered) under section 52G and, either by itself or together with other corporations, operates or controls a news business; and
 - (b) the agreement provides that a corporation mentioned in subparagraph (a)(i) will ensure that remuneration is to be paid to the news business for the making available of the news business' covered news content by the digital service; and
 - (c) the differentiation arises solely from the amount of that remuneration.

- (5) Subsection (2) does not apply in relation to differentiation if:
 - (a) there is an agreement between:
 - (i) the responsible digital platform corporation, or a related body corporate of the responsible digital platform corporation; and
 - (ii) a corporation that is registered (or is eligible to be registered) under section 52G and, either by itself or together with other corporations, operates or controls a news business; and
 - (b) the agreement provides that:
 - (i) a corporation mentioned in subparagraph (a)(ii) will ensure the provision of a specified type of covered news content to be made available by the digital service; and
 - (ii) a corporation mentioned in subparagraph (a)(i) will ensure that the content is ranked preferentially when the digital service distributes the covered news content; and
 - (c) the differentiation arises solely from that preferential ranking.
- (6) For the purposes of this section:
 - (a) treat the reference in the definition of *news source* in section 52A to “it produces” as instead being a reference to “it regularly produces”; and
 - (b) treat the reference in that definition to “news content” as instead being a reference to “covered news content”.

- (4) Schedule 1, item 1, page 26 (after line 26), after Subdivision B, insert:

Subdivision BA—Mediation

52ZIA Obligation to participate in mediation

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

52ZIB Rules about conduct of mediation

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

- (4) Without limiting the scope of regulations that may be made for the purposes of subsection (1), those regulations may:
 - (a) set out rules relating to the payment of the costs of the mediator; and
 - (b) without limiting the scope of paragraph (a), specify who is to pay those costs.

52ZIC Termination of mediation

- (1) A mediation under this Subdivision terminates if:
 - (a) unless paragraph (b) applies—2 months have passed since the start of the mediation; or
 - (b) if the bargaining parties agree to a 2-month extension of the mediation—4 months have passed since the start of the mediation; or
 - (c) the mediator decides to terminate the mediation in accordance with subsections (3) and (4); or
 - (d) the bargaining parties agree to terminate the mediation.
 - (2) To avoid doubt, the bargaining parties can only agree to one extension in accordance with paragraph (1)(b).
 - (3) The mediator may decide to terminate the mediation if, having regard to the conduct of the bargaining parties in the mediation, the mediator considers that there are no reasonable prospects of the bargaining parties reaching agreement over each core bargaining issue.
 - (4) The mediator may decide to terminate the mediation whether or not a bargaining party has asked the mediator to do so.
- (5) Schedule 1, item 1, page 27 (line 26) to page 28 (line 5), omit subsection 52ZL(2), substitute:
- (2) The bargaining party that is the bargaining news business representative may give a notice to the Commission that arbitration about the remuneration issue should start, if:
 - (a) both of the following conditions are satisfied:
 - (i) mediation in respect of the core bargaining issues has terminated in accordance with section 52ZIC;
 - (ii) the bargaining parties had not reached an agreement about terms for resolving the remuneration issue before the mediation terminated; or
 - (b) the bargaining parties have agreed to arbitration about terms for resolving the remuneration issue no earlier than 10 business days after the notification referred to in paragraph (1)(a) was made.

RICHARD PYE
Clerk of the Senate

The Senate
24 February 2021