

2019-2021

The Parliament of the
Commonwealth of Australia

THE SENATE

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

(Amendments to be moved by Senator Patrick in committee of the whole)

- (1) Schedule 1, item 1, page 24 (after line 3), after Division 5, insert:

Division 5A—Audits and reviews of designated digital platform services

52ZCA Audits of algorithms and practices of designated digital platform services

Carrying out audits

- (1) The Commission may carry out an audit of the operation of the algorithms and internal practices of a designated digital platform service in relation to:
 - (a) the impacts of their operation on access to, and availability of, covered news content; and
 - (b) whether their operation causes, or is likely to cause, differentiation of a kind referred to in Division 5 or other anti-competitive or unfair results in relation to the accessibility and availability of covered news content.
- (2) Without limiting subsection (1), the audit may include the operation of the designated digital platform service in relation to:
 - (a) crawling, indexing, making available and distributing news businesses' covered news content; and
 - (b) referral traffic from the service to news businesses' covered news content; and
 - (c) the distribution of advertising directly associated with news businesses' covered news content made available by the service.
- (3) The Commission must carry out at least one audit of each designated digital platform service during each financial year.
- (4) An audit must be carried out by members of the staff of the Commission.

Requirement to produce documents, records or things and provide assistance

- (5) A person (the **auditor**) who is carrying out an audit under this section may require the responsible digital platform corporation for the designated digital platform service:
 - (a) to produce any documents, records or things that the auditor is satisfied are relevant to the audit; or
 - (b) to provide the auditor with all reasonable facilities and assistance for the effective exercise of powers under this Division.
- (6) A responsible digital platform corporation must comply with a requirement under subsection (5).

Other matters

- (7) If there is more than one responsible digital platform corporation for the designated digital platform service, the obligations in this section apply to each of those responsible digital platform corporations separately.
- (8) This section does not limit section 155 (which is about the general information-gathering powers of the Commission) or other powers of the Commission under this Act.

52ZCB Annual reviews and public reporting on algorithms and practices of designated digital platform services

- (1) The Commission must review, and report each financial year on, the operation of the algorithms and internal practices of designated digital platform services, and their impact on the accessibility and availability of covered news content.
- (2) Without limiting subsection (1), a report under that subsection must include:
 - (a) a summary of the audits the Commission has undertaken under section 52ZCA during the financial year, including the findings of those audits; and
 - (b) the Commission's assessment of whether the Commission's auditing and review activities have indicated any evidence in relation to digital platform services of anti-competitive activity or practices that unfairly limit or distort access to covered news content.

Report must not include trade secrets

- (3) The Commission must not include in a report under subsection (1) information the disclosure of which would reveal a trade secret of a responsible digital platform corporation.
- (4) Reports under subsection (1) must also comply with such requirements in relation to the protection of confidential information as are specified in a determination made by the Minister for the purposes of this subsection. For this purpose, information is **confidential information** if, and only if, the publication of the information could reasonably be expected to prejudice substantially the commercial interests of a person.

Opportunity to comment on proposed report before finalising

- (5) After preparing a proposed report under subsection (1), the Commission must give to the responsible digital platform corporation for each designated digital platform service covered by the report either:
 - (a) a copy of the proposed report; or

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- (b) extracts of the parts of the proposed report that relate to the responsible digital platform corporation.
 - (6) If the recipient of the proposed report, or extracts from the proposed report, gives written comments to the Commission within 28 days after receiving the proposed report or extract, the Commission must:
 - (a) consider those comments before preparing the final report; and
 - (b) include in the final report the written comments received.

Timing and publication of final report

- (7) The Commission must:
 - (a) give a report under subsection (1) to the Minister as soon as practicable and no later than 6 months after the end of the financial year concerned; and
 - (b) publish the report on its website.
- (8) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

[audits and reviews]

- (2) Schedule 1, item 8, page 52 (line 19), after “52ZC,”, insert “52ZCA,”.

[penalty]

- (3) Schedule 1, item 10, page 53 (after line 12), after paragraph (4A)(d), insert:
 - (da) section 52ZCA;

[penalty]