

A review of proposals to
provide news organisations
with access to tax deductible
gifts in Australia

[Public
Interest
Journalism
Initiative]

About this report

The purpose of this paper is to present an overview of proposals made by various inquiries, news organisations, civil society and government to extend philanthropic giving incentives to the news industry. By drawing on material provided to government and regulatory inquiries into the news sector over the past decade, and in particular the Finkelstein Inquiry (2012), the Future of Public Interest Journalism Inquiry (2018) and the Digital Platforms Inquiry (2019), this paper will identify the most common features of proposals and inform further stages of research.

This paper was written by Gary Dickson, Research & Projects Manager at the Public Interest Journalism Initiative, as part of an ongoing research project to investigate the potential of philanthropic giving for public interest journalism. The project's advisory group, consisting of Dr Bill Birnbauer, Krystian Seibert, Regina Hill, Anna Draffin, and Dr Margaret Simons, all provided useful feedback to draft versions of this document.

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1. Introduction

The financial difficulties faced by the news media industry in Australia are well documented: advertising revenue fell by billions of dollars per annum between 2001 and 2016¹; leading to thousands of job losses², newsroom closures³ and the serious risk of under provision of public interest journalism – the journalism that enables citizens to participate in public life.⁴

Multiple inquiries have examined this issue in the past decade. A recurring recommendation of these inquiries, but one that remains under-researched and under-developed as a policy option in Australia, is to provide incentives for philanthropic giving to the news sector. The strength of the not-for-profit news sector in the United States, which has developed largely since the Global Financial Crisis, is often used as evidence of the potential power of this model.⁵

The comparison to the United States is likely to be a misleading one: as Dr Bill Birnbauer points out in his research into the factors that aided the development of the American not-for-profit news sector, “massive trusts with billions of dollars in holdings are a distinctively US institution”.⁶

Despite repeated policy attention to the potential of philanthropic support for news producers, there has been no research on the supply side of such funding. No study has been conducted among philanthropic donors in Australia to assess their interest in giving to news, the factors that might facilitate or constrain their ability to give, or the amount of philanthropic funding that might be given. There is also a need to identify and assess potential tax changes or mechanisms that could be used to enable and encourage philanthropic giving and to understand how they might influence philanthropic activity if they are adopted.

2. Journalism charities in Australia

Organisations that operate as not-for-profits and have a charitable purpose may register with the Australian Charities and Not-for-profits Commission (ACNC) as a charity. Registered charities may receive special tax treatment, including income tax exemption, goods and services tax concessions and a rebate on fringe benefits tax.

¹ Australian Competition and Consumer Commission 2019. *Digital Platforms Inquiry: Final Report*. p. 17.

² Ibid. p. 18.

³ Ibid. See also Dickson G. 2020. Australian Newsroom Mapping Project; Dickson G. 2021. *Australian Newsroom Mapping Project Report: February 2021*. p. 4.

⁴ ACCC 2019. p. 18.

⁵ For detail of the development of the not-for-profit news sector in the US, see in particular Birnbauer B 2018. *The rise of nonprofit investigative journalism in the United States*.

⁶ Birnbauer 2018. p. 65.

In order to be approved as a charity, an organisation must demonstrate that it has a charitable purpose. Organisations may have multiple charitable purposes. The *Charities Act 2013* (Cth) lists 12 purposes:

- a) Advancing health
- b) Advancing education
- c) Advancing social or public welfare
- d) Advancing religion
- e) Advancing culture
- f) promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- g) Promoting or protecting human rights
- h) Advancing the security or safety of Australia or the Australian public
- i) Preventing or relieving the suffering of animals
- j) Advancing the natural environment
- k) Any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)
- l) Promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country, (where that change furthers or opposes one or more of the purposes above).

Two further subtypes of charity are listed in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth): Public Benevolent Institutions, organisations whose main purpose is to relieve suffering that is serious enough to arouse compassion amongst the public, and Health Promotion Charities, which promote the prevention or control of diseases in people.

News production as an activity does not easily fit into any existing category of charitable purpose. Prior to the purposes being defined by statute in the *Charities Act* it was nearly impossible for news to be considered charitable. A common law precedent from the 1930s held that the commercial imperatives inherent in publishing meant that a newspaper could not be a charitable object: “The notion of a daily newspaper necessarily carries with it the conduct of a business enterprise which could not ignore the temporal necessity of recovering outlay by revenue”.⁷

In the period since the *Charities Act* came in to force some organisations have successfully registered under the ‘Other purpose beneficial to the general public’ category, such as the *Epoch Times*⁸ and the *Churchill & District News*.⁹ Other civil society organisations adjacent to the news media industry have been accepted as advancing education and culture¹⁰ or promoting or protecting human rights.¹¹ PIJI is registered to advance public debate on law and for analogous purposes beneficial to

⁷ Roman Catholic Archbishop v Lawler and Ors [1934] 51 CLR 1.

⁸ Australian Charities and Not-for-profits Commission 2020. Australian Epoch Times Ltd.

⁹ ACNC 2020. Churchill & District News.

¹⁰ ACNC 2020. Walkley Foundation Limited.

¹¹ ACNC 2020. Alliance for Journalists’ Freedom.

the general public.¹² The largest not-for-profit news organisation in Australia outside of the public broadcasters, the Australian Associated Press, is registered as advancing education, advancing social or public welfare, and promoting reconciliation, mutual respect and tolerance between groups in Australia.¹³

Recognising the confusing pathways to registration, the Australian Competition and Consumer Commission (ACCC) in its Digital Platforms Inquiry final report recommended that a new category of charitable purpose be established for not-for-profit organisations that create, promote or assist the production of public interest journalism.¹⁴

Another possible path to achieving clarity around whether public interest journalism is a valid charitable purpose may be to test it in the courts. The High Court in 2010 held that an organisation should not be necessarily excluded from obtaining charitable status because it has a main or dominant political purpose,¹⁵ reversing a long-standing common law principle. This is reflected in the 2013 statutory definition of charitable purposes that followed the case.¹⁶

In that decision, the Court addressed a “normative tension”¹⁷ between the common law restriction on the free political expression of charities and the (albeit limited) implied freedom of political communication provided by the Constitution.¹⁸ Reflecting on the possible implications of the decision, Joyce et al write that:

The political purposes doctrine, in effect, upends the hierarchy of values implicit in Australian public law and in the international jurisprudence on freedom of expression. As the majority rightly perceived, the argument that the political purposes doctrine maintains the ‘coherence’ of the law simply fails to recognise the deeper normative incoherence between a constitutional arrangement that depends upon freedom of political communication and a common law doctrine that targets precisely that form of communication.¹⁹

Legal research could be undertaken as to whether that decision leaves open the possibility that organisations that conduct public interest journalism as their main or dominant purpose should not be prevented from registering as charities, assuming that their purpose is essential to generating debate and discussion in furtherance of democratic governance.

¹² ACNC 2020. Public Interest Journalism Initiative Ltd.

¹³ ACNC 2021. Australian Associated Press Ltd.

¹⁴ Australian Competition and Consumer Commission 2019. *Digital Platforms Inquiry Final Report*. p. 338.

¹⁵ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42.

¹⁶ *Charities Act 2013* (Cth) 12(1)(l).

¹⁷ Joyce C, Harding M, O’Connell A 2011. Navigating the politics of charity: reflections on Aid/Watch Inc v Federal Commissioner of Taxation. *Melbourne University Law Review* 35(2).

¹⁸ *Lange v Australian Broadcasting Corporation* [1997] HCA 25.

¹⁹ Joyce et al 2011.

3. Deductible gift recipient status

As well as obtaining direct tax relief, organisations that are registered as charities may apply for deductible gift recipient (DGR) status, which enables donors to claim a tax deduction for gifts and donations made to that organisation. Not all charitable organisations are eligible for DGR status: of 58,000 registered charities²⁰ only around 30,000 have DGR status.²¹

As will be discussed below, news production does not fit easily within the existing framework for granting DGR status, and even among the small number of registered news charities only a few have successfully obtained it. This is a common focus of inquiry. There are two models for extending tax deductible status to news organisations that are frequently proposed:

1. creating a new deductible gift recipient category for journalism
2. establishing a central philanthropic trust to receive and distribute donations.

Creating a new deductible gift recipient category for journalism

In 2017 the Senate Select Committee Inquiry into the Future of Public Interest Journalism asked Commonwealth Treasury whether not-for-profit news organisations were eligible to obtain tax deductible gift status. Treasury responded only that they have the ability to seek DGR status under the existing framework and provided general information about how the process works for any organisation.²² The Government has maintained the same position in responding to calls for reform,²³ though the small number of news organisations that have successfully obtained DGR status and the circumstances in which they achieved this suggests that some changes may be required.

There are three paths to obtaining deductible gift recipient status as a news charity.

Organisations whose activities fall within one of the 51 categories of general purpose can apply to be endorsed for DGR status by the Australian Taxation Office or other department. This is the standard route to DGR status for other types of organisation. The categories are grouped into the following:

- health (public hospitals, public authorities for research, health promotion charities, public ambulance services and community sheds);

²⁰ Australian Charities and Not-for-profits Commission 2020. *Australian Charities Report 2018*. p. 35.

²¹ McGregor-Lowndes M 2020. Are there too many Deductible Gift Recipients in Australia? *Philanthropy Australia*. 21 October.

²² Australian Senate 2017. *Final Report of the Senate Select Committee on the Future of Public Interest Journalism* p. 121.

²³ Australian Government 2018. *Australian Government response to the Senate Select Committee on Public Interest Journalism report: Future of Public Interest Journalism*. p. 7; Australian Government 2019. *Regulating in the digital age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry*. p. 10.

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- education (public universities and public funds, higher education institutions, residential education institutions, TAFEs, public funds for religious education in government schools, scholarship funds);
- research (limited to approved research institutes);
- welfare and rights (registered public benevolent institutions and public funds, public funds for harm prevention charities, disaster relief funds, and animal welfare);
- defence (including public institutions or funds for members of the armed forces and public funds for war memorials);
- environment (public funds on the Register of Environmental Organisations);
- the family (public funds for an approved marriage guidance organisation or for family counselling or family dispute resolution);
- international affairs (overseas aid and disaster relief funds);
- sports and recreation (limited to Girl Guides Australia and Scout Association of Australia);
- cultural organisations (public funds on the Register of Cultural Organisations, and public libraries, museums and art galleries);
- fire and emergency services; and
- ancillary funds (public or private trusts established to provide money or benefits to DGRs).

There are a few examples of media organisations that have been endorsed for deductible gift recipient status where their core activities focus on existing eligible categories. Aeon Media Group, which produces the arts, culture and history-focused Aeon Magazine, is endorsed on the Register of Cultural Organisations (ROCO). Civil society organisations that are news-focused have also received endorsement through ROCO, including the Walkley Foundation, Melbourne Press Club and the Community Broadcasting Association of Australia. There are also around 120 community radio stations with DGR status in Australia, many of which are endorsed through ROCO.²⁴ Some of these engage in small amounts of news production, but most do not. The Bundaberg Talking Newspaper Association, a news reading service in Queensland for the vision-impaired received its endorsement as a registered Public Benevolent Institution given its role as a service provider for people with disabilities.

Another path to obtaining deductible gift recipient status is to be specifically listed in the *Income Tax Assessment Act 1997* by Parliamentary amendment. This is a high threshold and significant regulatory barrier for most not-for-profits to overcome²⁵, though not an impossible one. Organisations that have obtained deductible gift recipient status via specific listing include the civic society organisations the Judith Neilson Institute for Journalism and Ideas and the Alliance for Journalists' Freedom.

²⁴ Data provided by the Community Broadcasting Association of Australia, November 2020.

²⁵ See for example ACCC Digital Platforms 337; Papandrea 2016. P. 16.

The Conversation, a research dissemination site, was specifically listed under the education category in 2016, following “extensive lobbying”²⁶ of the Commonwealth Treasurer by a network of supporters. The Conversation does produce news and journalism as its core activity, however, Chief Executive Officer Lisa Watts has said that the submission to Treasury would likely have been unsuccessful if it had “been positioned as a media company rather than a research outcome disseminator and knowledge platform”.²⁷

An alternate path to accessing deductible gifts as a news producer is through a partnership with another institution that has already been endorsed and which shares a common purpose and objectives. Examples in this category include the digital commentary magazine Inside Story, which is produced by Swinburne University, and Eureka Street, which receives donations through a partnership with the Australian Jesuit Foundation.

The Guardian Civic Journalism Trust was established in 2018 as a partnership between the Guardian Australia and the Centre for Advancing Journalism at the University of Melbourne. The fund is managed by the University and is used to fund education activities for journalism students at the Guardian. The Guardian has said that the fund “is a welcome method for GNMA to increase investment in public interest journalism and train the next generation of journalists”, but that it also “requires a substantial amount of administration and limits GNMA’s ability to grow philanthropic revenue on its own”.²⁸

Though pathways exist for news organisations to obtain deductible gift recipient status or access deductible giving, they are narrow and difficult to navigate even for the well-established and connected. It is notable that only two – The Conversation and the Guardian Australia – have the production of original journalism as a core activity of their organisations, and both of those have to position their activities as education in order to fit within the criteria. As Philanthropy Australia has observed, there is a difference between public interest journalism organisations having the ability to “seek” DGR status under the existing framework and them actually obtaining it.²⁹

Policy attention and recommendations for reform

The lack of a not-for-profit news sector in Australia has been the subject of repeated policy attention. The difficulty that news organisations face obtaining tax deductible status compared with similar overseas jurisdictions is a commonly cited barrier to its

²⁶ Papandrea F. 2016. Australia: Impact of Charity and Tax Law/Regulation on Not-for-Profit News Organizations. In Picard R. G., Belair-Gagnon V. and Ranchordás S. (eds.) *The impact of charity and tax law/regulation on not-for-profit news organizations*. p. 22.

²⁷ Ibid.

²⁸ Guardian Australia 2019. *GNM Australia Pty Ltd response to the preliminary report of the ACCC Digital Platforms inquiry*. p. 24.

²⁹ Philanthropy Australia 2019. *Australian Government Response to Digital Platforms Inquiry*. p. 2.

development.³⁰ Unlike the US and, more recently, the UK and Canada, there has been little legislative reform or rule interpretation that would allow for not-for-profit news organisations to obtain charity and tax deductible status. Though some newsrooms, previously discussed, have been successful the barrier remains prohibitively high for most organisations.

The issues faced by not-for-profit media in Australia were flagged early in the 2010s, a decade which also saw a significant expansion of the sector in the United States. The landmark Independent Inquiry into the Media and Media Regulation, conducted by the Hon. Raymond Finkelstein AO QC and Professor Matthew Ricketson in 2011-12, heard that government could take a role in making investment and philanthropic contributions to not-for-profit news organisations more attractive to donors by extending tax deductibility to them.³¹ The report concluded broadly that “there is not a case for government support” but that “the situation is changing rapidly, and requires careful and continuous monitoring”.³²

Then-Shadow Minister for Communications and the Arts Malcolm Turnbull MP also suggested in 2011 that tax deductible status for journalism could be worth investigation³³, a position he retreated from when he took over the ministry three years later.³⁴

“... there would be some merit in considering whether some level of support could be given, in terms of deductible gift recipient status, for not for profit newspapers, online or hard copy or both, which committed to a code of conduct analogous perhaps to that subscribed to by the ABC.

I simply pose this as something to consider – at this stage the Coalition is looking for ways to cut expenditure and new tax breaks are not in the offing, but in the interests of looking beyond the next few weeks or even the next election, we should also be looking hard at how we ensure the survival of journalism”.

The issue was next raised to the Future of Public Interest Journalism Inquiry, a Senate Select Committee inquiry established in exchange for crossbench support for media ownership reform legislation in 2017. Submitters to the inquiry including academics,³⁵

³⁰ See for example Papandrea 2016. p. 17; Australian Competition and Consumer Commission 2019. *Digital Platforms Inquiry: Final Report*. p. 338; Australian Senate 2017. *Final Report of the Senate Select Committee on the Future of Public Interest Journalism* p. 117.

³¹ Department of Broadband, Communications and the Digital Economy 2012b. *Report of the Independent Inquiry in the Media and Media Regulation*. p. 460.

³² Ibid. pp. 10-11.

³³ Turnbull M 2011. The Future of Newspapers – Is it the End of Journalism? Speech to Centre for Advancing Journalism, University of Melbourne, 8 December. Quoted in Papandrea F 2016. p. 31.

³⁴ Turnbull M 2014. Minister for Communications Speech to the Newspaper Works Forum, 21 August. Quoted in Papandrea F 2016. p. 33.

³⁵ Birnbauer B 2017. Submission 1. p. 2; Berg C 2017. Submission 16; Centre for Media Transition 2017. Submission 34. p. 8.

small and not-for-profit digital media organisations³⁶ and civil society³⁷ recommended adjustments to enable tax deductible status for not-for-profit journalism.

Dr Bill Birnbauer of Monash University, whose doctoral research examined the development of the not-for-profit investigative journalism sector in the United States, recommended tax deductibility for independent journalism centres that is conditional on adherence to a code of ethics; undertaking normal journalistic practice and having editorial independence from their funders,³⁸ a recommendation which was endorsed by the Public Interest Journalism Foundation.³⁹

Dr Chris Berg of the Institute for Public Affairs, a libertarian think tank, submitted that allowing organisations to obtain deductibility status would alleviate some (but not all) press freedom concerns associated with direct government funding; encourage organisations to self-fund rather than draw on the public purse and make them accountable to their audiences and supporters.⁴⁰ The Centre for Media Transition at the University of Technology Sydney submitted that though it would prefer to see more policy energy devoted to assisting commercial news media companies, it would support reform of charity and tax deductibility frameworks to support not-for-profit public service journalism organisations.⁴¹

The Walkley Foundation said that not-for-profit status disproportionately helps local news. It recommended that not only should donations to not-for-profit journalism organisations be tax deductible, but that there should be structures in place to enable for-profit media to transition to not-for-profit.⁴²

The inquiry's final report found that "compelling evidence" had been provided that the health of public interest journalism in Australia could be improved through making it easier for some kinds of not-for-profit media organisations to obtain tax deductible status.⁴³ It recommended that the Commonwealth "develop and implement a framework for extending deductible gift recipient (DGR) status to not-for-profit news media organisations in Australia", and recommended that access to DGR status be restricted to organisations that "adhere to appropriate standards of practice for public interest journalism".⁴⁴ Despite disagreeing with large parts of the report and its conclusions, Coalition Senators on the committee agreed with the recommendation in their dissenting comments, while noting that "commercial media outlets are, and will likely remain, the mainstay of news gathering and investigation in Australia".⁴⁵

³⁶ Schwartz Media 2017. Submission 10. p. 4; Keane S 2017. Submission 22. pp. 2-4; Croakey 2017. Submission 25. p. 7; The Conversation Media Group 2017. Submission 68. p. 5.

³⁷ Public Interest Journalism Foundation 2017. Submission 13. p. 3; Walkley Foundation 2017. Submission 66. p. 14.

³⁸ Birnbauer 2017. p. 5.

³⁹ PIJF 2017. p. 17; Birnbauer is a board member of the Foundation.

⁴⁰ Berg 2017. p. 4.

⁴¹ CMT 2017. pp. 7-8.

⁴² Walkey Foundation 2017. p. 14.

⁴³ Australian Senate 2017. p. 117.

⁴⁴ Ibid. p. 135.

⁴⁵ Ibid. p. 141.

Despite the committee’s statement that “compelling evidence” had been presented, it is worth noting that the committee only heard about the general demand for funding among news organisations. No evidence of the potential supply of philanthropic donations to news in Australia was presented and no submissions were received from the philanthropic sector. Some participants were cautious: Associate Professor Andrew Dodd of the University of Melbourne expressed scepticism that there would be a sufficient quantum of philanthropic funding in Australia to solve the problems faced by the sector,⁴⁶ and Dr Bill Birnbauer in his submission noted the “substantially different funding markets” in Australia and the United States.⁴⁷ There remains a need for further research into the propensity and capacity of philanthropic interest in news production in Australia.

In its response to the Future of Public Interest Journalism Inquiry report, the Government did not support the recommendation to extend DGR status to journalism.⁴⁸

The most important outcome of the Senate’s inquiry was the Australian Competition and Consumer Commission (ACCC) commencing a study of the power of platforms in digital advertising markets and its impact on the production and provision of public interest journalism. The Digital Platforms Inquiry, conducted 2018-19, made no mention of philanthropy and tax deductibility for charitable news producers in either its issue paper or preliminary report, even as it was considering other tax reform measures that could support public interest journalism. Only one mention of philanthropy was made in the first round of submissions; the Walkley Foundation discussing their philanthropic fund and aspiration to use it to grow the local not-for-profit news sector.⁴⁹

Deductible gift recipient status for journalism was introduced to the Digital Platforms Inquiry by the public health news site Croakey,⁵⁰ the Guardian Australia⁵¹ and newly-established civil society organisations the Judith Neilson Institute for Journalism and Ideas⁵² and the Public Interest Journalism Initiative⁵³ in their responses to the preliminary report.

⁴⁶ Ibid. p. 56.

⁴⁷ Birnbauer 2017. p. 5.

⁴⁸ Australian Government 2018. *Australian Government response to the Senate Select Committee on Public Interest Journalism report: Future of Public Interest Journalism*. p. 7.

⁴⁹ Walkley Foundation 2018. *Response to the Australian Competition and Consumer Commission Digital Platforms Inquiry Issues Paper*. p. 10.

⁵⁰ Croakey Health Media 2019. *Response to ACCC Digital Platforms Inquiry*. p. 11.

⁵¹ Guardian Australia 2019. *GNM Australia Pty Ltd response to the preliminary report of the ACCC Digital Platforms inquiry*. p. 25.

⁵² Judith Neilson Institute for Journalism and Ideas 2019. *Submission in response to the ACCC Digital Platforms Inquiry Preliminary Report*. p. 4.

⁵³ Public Interest Journalism Initiative 2019. *PIJI Submission further to the Preliminary Report*. p. 7.

The Guardian Australia discussed the Guardian Civic Journalism Trust, the difficulties associated with that model, and suggested a new deductible gift recipient category for ‘civic journalism’:

“A public fund maintained for the purpose of providing money for civic journalism or an institution whose sole activity is the undertaking or support of civic journalism”

With a suggested definition of ‘civic journalism’ that closely mirrors the definition of ‘public interest journalism’ adopted in the final report:

“Journalism that investigates and explains public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision-making”.⁵⁴

PIJI suggested that philanthropic support would always be a minor contributor to the overall investment in the production of public interest journalism, but that it could bring increased innovation and risk tolerance; targeted support for investigative journalism and greater media diversity.⁵⁵ PIJI also submitted that philanthropic support would disproportionately benefit local and regional media, a suggestion which was indirectly contested by country newspaper associations.⁵⁶

In its final report the ACCC recommended that a new category be created to enable not-for-profit organisations to be endorsed for deductible gift recipient status if they “create, promote or assist the production of public interest journalism”. The ACCC saw the requirements to be registered with the ACNC and the “disqualifying purposes”, including “promoting or opposing a political party or candidate for political office” as being appropriate regulatory conditions for not-for-profit news producers.⁵⁷ In addition, it recommended that organisations “should be required to impose a level of separation and independence between donors and editorial decision makers and abide by codes of conduct or ethics.”⁵⁸

The recommendation was supported by civil society organisations including JNI, PIJI, Philanthropy Australia, the Community Broadcasting Association of Australia and the Australian Community Television Alliance. Among news producers Croakey Health Media offered strong support, while the Special Broadcasting Service said it supported the recommendation on the condition that it not affect funding levels for the public

⁵⁴ Ibid.

⁵⁵ PIJI 2019. pp. 7-8.

⁵⁶ Country Press Australia 2019. *ACCC Digital Platforms Inquiry Final Report recommendations: Country Press Australia response*. p. 5; Queensland Country Press Association 2019. *ACCC Digital Platforms Inquiry Final Report Submission*. p. 4; Country Press South Australia 2019. *ACCC Digital Platforms Inquiry Final report recommendations: Country Press South Australia response*. p. 5.

⁵⁷ Australian Competition and Consumer Commission 2019. *Digital Platforms Inquiry Final Report*. p. 339.

⁵⁸ Ibid.

broadcasters.⁵⁹ The major commercial news companies, including Nine, News Corp and Seven West Media, did not comment on the recommendation. No organisation indicated opposition, though many signalled disappointment that DGR status was the only tax reform measure in the final report. The response of the Centre for Media Transition is typical of this:

“We support this recommendation. We do, however, regret that the ACCC has backed away from its draft proposal to implement tax offsets for producers of public interest journalism ... we are concerned that the current proposal will have limited application in the news media industry. We believe the overarching goal is to improve and enhance the financial and commercial viability of the news business ... we want to see a diverse media sector capable of standing on its own two feet rather than reliant on philanthropy.”⁶⁰

In its response to the Digital Platforms Inquiry the Australian Government said that news producers could already access DGR status under the existing framework and declined to make any changes to tax settings for journalism production.⁶¹

Across these inquiries the benefits of simplifying access for not-for-profit news organisations to deductible gift recipient status were seen to be that it would:

- Bring increased innovation and tolerance for risk in the sector;
- Disproportionately benefit small publishers, particularly in local and regional media;
- Foster greater connection between publishers and communities;
- Alleviate press freedom concerns associated with direct government funding for media;
- Allow for targeted assistance to particular kinds of democratically-useful journalism, including ‘civic’ and ‘investigative’ journalism, and journalism that adheres to high editorial standards.

The main downside identified by some participants in inquiries was the lack of information about the size of the Australian philanthropic giving market for news. Others, particularly country newspaper associations but also the Liberal Party Senators that were part of the Future of Public Interest Journalism inquiry, have pointed out that the majority of news production in Australia is undertaken by for-profit entities and there is little benefit to be gained from policy focus on a not-for-profit news sector that largely does not exist.⁶²

The Government has consistently maintained the position that news organisations can access DGR status through the existing legal and regulatory framework.

⁵⁹ Special Broadcasting Service 2019. *SBS submission to the Public Consultation on the ACCC Digital Platforms Inquiry Final Report*. p. 3.

⁶⁰ Centre for Media Transition at the University of Sydney 2019. *Digital Platforms Inquiry: Submission to Treasury*. p. 4.

⁶¹ Australian Government 2019. *Regulating in the digital age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry*. p. 10.

⁶² See FPIJ 2018. pp. 141; CPA 2019 p. 5; QCPA 2019. p. 4; CPSA 2019. p. 5.

International experience

United States

The not-for-profit news sector in the United States is a common reference point when discussing the apparent merits of tax-deductible status for journalism. The not-for-profit news sector reached US\$500 million in annual revenue⁶³ – a large figure, though still proportionately small in sector worth US\$25 billion each year.⁶⁴

Much of the growth in the not-for-profit news sector in the United States has occurred since 2007. In his book documenting the rise of not-for-profit investigative journalism, Dr Bill Birnbauer identifies three primary factors in that growth: the disruption of the Global Financial Crisis and concerns about the future of quality reporting; the shift of key legacy journalists to the not-for-profit sector; and grants made by foundations and individual donors.⁶⁵

A key secondary factor for this review of policy is the gradual acceptance of the Internal Revenue Service to accept the registration of news producers as education not-for-profits, thereby granting them 501(c)(3) tax deductibility status. The guidelines for the education purpose could accommodate news organisations: it is defined as “the instruction of the public on subjects useful to the individual and beneficial to the community”; Birnbauer notes that the IRS accepted that publishing investigations and analysis for the purpose of achieving higher standards “furthers an educational purpose”.⁶⁶

The process of accepting news as not-for-profits was not simple. As in Australia, publishers were told to downplay their journalism function and focus instead on their education activities.⁶⁷ Decisions were inconsistent and could take up to three years to be made.⁶⁸ A rule that required the distribution of educational content be distinguishable from ‘ordinary commercial publishing practices’ caused particular trouble for not-for-profit news organisations⁶⁹ and has echoes of the Roman Catholic Archbishop v Lawler decision in Australia.

Birnbauer’s evidence from the US also offers a warning about the sustainability of organisations in a philanthropically funded news sector. Not-for-profit news organisations are heavily reliant on a few large donors, who generally don’t want to commit to recurrent funding.⁷⁰

⁶³ Institute for Nonprofit News 2020. The state of nonprofit news: entering a crisis year with growing audiences and steady finances. p. 4.

⁶⁴ Foster R and Bunting M 2019. Public funding of high-quality journalism. p. 30.

⁶⁵ Birnbauer 2018. p. 105.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid. p. 107.

⁶⁹ Ibid. p. 106.

⁷⁰ Ibid. pp. 65-66; Mitchell A, Jurkowitz M, Holcomb J, Enda J and Anderson M 2013. *Nonprofit journalism: a growing but fragile part of the US news system*. Pew Research Center; Knight Foundation 2015. *Gaining ground: how nonprofit news ventures seek sustainability*.

US not-for-profits are somewhat restricted in their ability to campaign or influence legislation. This restriction is not absolute: an organisation cannot hold 501(c)(3) status if “a substantial part of its activities is attempting to influence legislation,”⁷¹ though some limited activity is permissible. Tax exempt organisations can also engage in policy discussions by preparing and distributing educational materials. Nevertheless, Birnbauer observed that the restriction had an effect on editors: “some feared that even publishing commentary on legislation could jeopardise their tax status”, Birnbauer says. “This potentially chills free speech and makes it harder for a nonprofit media entity to do its job – covering important news and civic issues, and restricts development of sustainable business models”.⁷² Charity law in Australia does not impose such requirements, with charities being able to undertake advocacy in furtherance of their charitable purposes provided they comply with other requirements in the *Charities Act 2013*, such as not supporting or opposing political parties or candidates. Certain categories of deductible gift recipient may require charities to demonstrate that they have a particular purpose, such as public benevolent institutions having the main purpose of providing benevolent relief to people in need, which may mean that in practice that they cannot solely focus on advocacy activities. There is no clear limitation equivalent to that in US law, however.

Canada

In 2019 Canada introduced a suite of reforms intended to support the news media, including refundable labour tax credits, personal income tax credits for digital news subscriptions and tax deductions for donations to Registered Journalism Organizations (RJOs).⁷³

News media organisations seeking to access any form of tax credits must first be designated a Qualified Canadian Journalism Organization (QCJO). Criteria for this designation include original news content production; being owned by Canadians; employing at least two journalists who operate at arm’s length from management and primarily operating in Canada.⁷⁴ The original news content production test is primarily (at least 50%) limited to:

Matters of general interest and reports of current events, including coverage of democratic institutions and processes; where

- a. general interest means news content that is aimed at a general audience, as opposed to specialists of a specific field. Content should be diverse and may include a variety of content such as local news, national news, international news, social issues, business and economy, sports, culture, science and technology and the environment;

⁷¹ Ibid. p. 108; Internal Revenue Service 2020. Lobbying. 28 July.

⁷² Birnbauer 2018. p. 109.

⁷³ Government of Canada 2020. Guidance on the income tax measures to support journalism.

⁷⁴ Ibid.

- b. Democratic institutions include legislative bodies, municipal councils, courts of justice, and school boards; and
- c. Democratic processes include elections and proceedings in legislative assemblies such as the house of commons.⁷⁵

The news content test also outlines generally accepted journalistic processes of information production.

Once a news organisation has been designated a QCJO, it can then apply for RJO designation to become a qualified donee under the *Income Tax Act*, enabling it to receive tax-deductible donations. The purposes of the organisation are not separately tested for QCJO designation, except that the organisation must be operated for “purposes exclusively related to journalism”.⁷⁶ There are, however, specific corporate structural requirements that would limit the scheme to not-for-profits, including that it has trustees or a board of directors that deal with each other at arm’s length; it cannot accept gifts from any one source that represent more than 20% of its total revenue (including donations) and that no part of its income is payable to any proprietor, shareholder or other like individual.⁷⁷

United Kingdom

British news organisations’ access to tax deductibility status remains unclear. The Cairncross Review, a major independent study of the economic impact of digital platforms on the provision of journalism, recommended reforming the *Charities Act 2011* to recognise public interest journalism as a charitable purpose. The review noted that

“Although in principle it is possible that an organisation pursuing journalism could be registered as a charity under the existing framework, much depends on what the organisation does and how it does it. In practice, charity law as it currently stands is probably incompatible with the role of newspapers since most are commercial endeavours with political standpoints.”⁷⁸

As in Australia, the UK Government declined to add the new charitable purpose, finding instead that news organisations could already access deductible gift recipient status.⁷⁹

As part of the Government response, the Charity Commission published guidance on when journalism could fall under an existing charitable purpose.⁸⁰ Three examples of charity organisation were given, all with an education or capacity-building purpose:

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Cairncross Review 2019. *A Sustainable Future for Journalism*. p. 99.

⁷⁹ Government of the United Kingdom 2020. Government response to the Cairncross Review: a sustainable future for journalism.

⁸⁰ Thakor A. 2020. Read all about it: when can journalism be charitable? *Charity Commission*. 27 January.

The Conversation UK, structured similarly to Australia; the *Burngreave Messenger*, which trains members of its local community in news production through its free news service, and the Centre for Investigative Journalism, which trains reporters. The Charity Commission cautioned against drawing tenuous links between journalism production and charitable purposes however:

“If your news organisation is set up to advance citizenship or community development, the Commission would expect you to be able to show it how journalism translates into public participation and engagement”.⁸¹

In September 2020 the Public Interest News Foundation, discussed below, was awarded charitable status. In accepting its application the Charity Commission accepted that its proposed activities promoting high quality journalism for the public benefit fall within the description of charitable purposes.⁸² On that basis, PINF claims that it is the first organisation to be recognised in the UK as having a charitable journalism purpose⁸³ though its activities are essentially educative. PINF is discussed further below.

4. Establishing a trust to receive and distribute donations

The other method for enabling news producers to access tax deductible donations is to establish a dedicated philanthropic trust, managed by an independent entity, which would distribute funding according to its own objectives and eligibility criteria. The trust could also act as an auspicing organisation for smaller not-for-profit news organisations and charities that are unable to access DGR status.

There are precedents for creating independent bodies to support philanthropy, which have the authority to receive and make grants to organisations for designated purposes, without requiring those organisations to have DGR status. The Foundation for Regional & Rural Renewal (FRRR) and Australian Schools Plus (ASP) are two. In both cases philanthropic funding was used to incentivise and leverage government funding to support the setup of the administering entity.

There is also precedent for establishing entities designed to encourage philanthropic giving in particular sectors, such as Creative Partnerships Australia (CPA). CPA is a government owned company limited by guarantee that is responsible for the operation of the Australian Cultural Fund, which operates in a similar manner to FRRR and ASP. In the case of CPA, federal government funding covers the operational costs in order to leverage philanthropic funding into the arts and cultural sector.

⁸¹ Ibid.

⁸² Charity Commission for England and Wales 2020. Charity registration decision: Public Interest News Foundation. 22 September.

⁸³ Public Interest News Foundation 2020. PINF Awarded Charitable Status. Press release, 22 September; Waterston J. 2020. UK charity launched to support public interest journalism. *The Guardian*. 23 September.

This model has received much less attention in inquiries than creating a new deductible gift recipient category for journalism.

Without recommending it, the Finkelstein Inquiry discussed the possibility of government creating an endowment to support the production of journalism, modelled on existing schemes commonly seen in cultural and arts policy. It suggested that the government create an institution to independently manage the endowment, and that it could have specific goals such as increasing innovation or the production of stories for under-served communities or places. The endowment would be federally funded but would be established to be able to receive philanthropic donations.⁸⁴

The matter was not discussed in the final report of the Future of Public Interest Journalism Inquiry, though it was included in some submissions from civil society organisations.

The Public Interest Journalism Foundation suggested a production fund for independent journalism, drawing on the recommendations made in the 2012 Convergence Review for the Australian screen sector.⁸⁵ PIJF recommended that the fund be designed to encourage innovation and investment in regional Australia, under-represented communities and under-covered topics.

Similarly, the Journalism Education and Research Association of Australia recommended the creation of an endowment fund that was administered by Australian universities and had the joint goal of increasing journalism production and improving journalism education.⁸⁶

The Walkley Foundation suggested that Government fund public interest and investigative journalism through the Walkley Fund for Independent Journalism. The strengths of this proposal were seen to be existing expertise within the organisation in assessing and awarding grants for journalism, as well as a neutral and well-connected position within the industry. The fund would also be transparent, adopting existing guidelines for grant fund management developed by the US-based Institute for Nonprofit News and promote journalistic ethics by establishing a firewall between donors and stories.⁸⁷ Implicit to the model but not mentioned in the submission is the fact that the Walkley Foundation already has deductible gift recipient status via endorsement.

In their submission to Treasury on the Digital Platforms Inquiry, Philanthropy Australia discussed FRRR, ASP and CPA as models and suggested that if the Government is not inclined to extend DGR status to journalism organisations, it could follow those examples and create an independent charitable organisation as an alternative. The organisation would “support the flow of philanthropic funding to organisations undertaking public interest journalism but which cannot access DGR status

⁸⁴ DBCDE 2012b. p. 463.

⁸⁵ FPIJ 2017. p. 14; Department of Broadband, Communications and the Digital Economy 2012a. *Convergence Review Final Report*. p. 72.

⁸⁶ Journalism Education and Research Association of Australia 2017. *Submission 39*. p. 4.

⁸⁷ Walkley Foundation 2017. p. 15.

themselves”. The Government would seed fund the organisation for at least four years and provide a specific listing for the organisation in the *Income Tax Assessment Act 1997* (Cth) to provide it with deductible gift recipient status.⁸⁸

This model received further attention in 2020.

The News Media Bargaining Code was developed by the Australian Competition and Consumer Commission to address bargaining power imbalances between news media and digital platforms.⁸⁹ One of the issues discussed in the code’s development was whether the public broadcasters and the ABC in particular, which does not participate as a supplier in commercial advertising markets, should be able to bargain and receive revenue under the code.⁹⁰

In a joint submission responding to draft legislation presented in July 2020, PIJI and JNI recommended that the broadcasters be included under the code, but that any revenue generated by their content be used to establish a Public Interest Journalism Fund. The fund could be “structured to enable co-contributions and other revenue streams over time” and meet funding needs in sectors and topics that may not otherwise be commercially viable.⁹¹ The organisations proposed that the fund could also fund innovation, business transformation or provide start-up capital or loans.⁹²

The final version of the Code as passed by the Parliament in February 2021 allows for the public broadcasters to receive revenue.⁹³

In November 2020 the Australian Government released the Media Reform Green Paper for consultation.⁹⁴ The paper says that the Government “recognises that support of some form will be required to safeguard the ongoing provision and dissemination of journalism, particularly at a regional and local level”, and proposes a Public Interest News Gathering Trust funded by a portion of the sale of broadcast spectrum.⁹⁵ The Trust would provide grant opportunities to support provision of journalism, with priority given to labour costs and the production of court reporting and investigative journalism. It would be independently managed and have a strict

⁸⁸ Philanthropy Australia 2019. *Australian Government Response to Digital Platforms Inquiry*. pp. 4-5.

⁸⁹ ACCC 2020. News media bargaining code.

⁹⁰ Samios Z and Hunter F 2020. ABC, SBS exclusion from tech giants’ payments a ‘government’ decision. *Sydney Morning Herald*. 3 August.

⁹¹ Public Interest Journalism Initiative and Judith Neilson Institute for Journalism and Ideas 2020. *Joint submission on the Australian Competition and Consumer Commission’s Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Exposure Draft)*. p. 21.

⁹² Ibid.

⁹³ Meade A 2020. Google and Facebook news payments to include ABC and SBS after change to draft code. *Guardian Australia*. 25 November.

⁹⁴ Department of Infrastructure, Transport, Regional Development and Communications 2020. New rules for a new media landscape – modernising television regulation in Australia.

⁹⁵ Department of Infrastructure, Transport, Regional Development and Communications 2020. Media reform green paper. p. 26.

firewall placed between funders and editorial decisions. Though similar to the DGR trust model, co-funding through philanthropic contribution is not proposed in the green paper.

International comparisons

United States

The sale of broadcast spectrum in the United States generated a windfall revenue estimated to be in the hundreds of millions of dollars for New Jersey in 2018.⁹⁶ Free Press Action, an advocacy organisation, successfully campaigned to have part of the profit allocated to the Civic Information Consortium, a new not-for-profit organisation established to support local news media in the state.⁹⁷ The state promised US\$2 million and allocated the first US\$500,000 in its 2020 budget.⁹⁸

The Consortium is a 501(c)(3) not-for-profit established as a collaboration between five universities in the state. As well as funding from the state government, it will solicit philanthropic contributions. The Consortium will fund projects that “meet the information needs of residents around New Jersey, especially in underserved communities, low-income communities and communities of color”.⁹⁹

Federally, Senators Schatz, Bennet and Klobuchar introduced the Future of Local News Commission Act to the Senate in late September 2020. The Act proposes a 13 member federal commission to examine local news and propose policy mechanisms to support “professional, independent and high quality news to meet the needs of the public”.¹⁰⁰ Among other things, the Act proposes to examine whether the government should establish a National Endowment for Local Journalism.¹⁰¹

United Kingdom

This model has also received some recent attention in the United Kingdom. A major recommendation of the Cairncross Review was the creation of an Institute for Public Interest News (IPIN), a public body that would operate independently of government to build partnerships in industry and with platforms and philanthropists, receive and distribute public and private funds, undertake research and manage the BBC’s existing

⁹⁶ Lichterman J 2017. “One-in-a-lifetime opportunity”: Local news could see a windfall from the FCC’s spectrum auction. *Nieman Lab*. 5 January.

⁹⁷ Schmidt C 2019. How Free Press convinced New Jersey to allocate \$2 million for rehabilitating local news. *Nieman Lab* 15 July.

⁹⁸ Rispoli M 2020. Why the Civic Info Consortium is such a huge deal. *Free Press*, 30 September.

⁹⁹ Ibid.

¹⁰⁰ Roberts J. 2020. Senator Bennet proposes a Federal solution to a ‘local news’ crisis. *Pagosa Daily Post* 27 November.

¹⁰¹ U.S. Congress, Senate, *Future of Local News Commission Act of 2020 S 4772*, 116th Congress, 2nd Session. Introduced 30 September 2020.

Local Democracy Reporting Service.¹⁰² The recommendation was rejected by some in industry, including the publisher peak body the News Media Alliance¹⁰³ and was not taken forward by the government on the basis that it “is not for the government to lead on this issue”¹⁰⁴. The government did recognise the value of parts of the proposal and committed to undertake further investigations on how it could commission research into news provision and its impact on communities.¹⁰⁵

At least two bodies have been proposed in the UK that are similar to this model.

The Public Interest Journalism Foundation launched in November 2019 to provide funding, advice and as a convening body for independent news providers. The Foundation was a key recommendation of the Independent Publishers Taskforce, a working group convened by IMPRESS, a press industry self-regulatory body, in April 2019 to assess the challenges and needs faced by independent news providers.

PINF does not draw revenue from the UK Government, though in their blueprint for the foundation the Independent Publishers Taskforce indicated a willingness to do so, as well as philanthropy and funding by the digital platforms.¹⁰⁶ Its first (and so far only) funding round was funded by a donation from the Joseph Rowntree Reform Trust.¹⁰⁷ The JRRT also funded the initial working group that led to PINF’s establishment.¹⁰⁸

It ‘exists to promote citizenship, community development and high ethical standards of journalism’.¹⁰⁹ It has three programmes to achieve these ends:

- Education, “to build knowledge and understanding of public interest news among the general public and people who work within the sector”
- Capacity building – publishers, “a programme to build capacity of public interest news organisations”, and
- Capacity building – infrastructure, “a programme to build the capacity of organisations that provide infrastructure for the public interest news sector”.¹¹⁰

In June 2020 it established its first funding programme, a COVID-19 Emergency Fund, which distributed £60,000 to 20 publishers.

Separately, in March 2019 the BBC announced that it would establish the Local Democracy Foundation, a charitable organisation that would oversee and expand its existing Local Democracy Reporting Scheme which places journalists in communities in

¹⁰² Cairncross Review 2019. *A sustainable future for journalism*. 12 February.

¹⁰³ Sharman D. 2020. Government kills Cairncross bid to set up ‘institute for public interest news’. *HoldtheFrontPage.co.uk*. 27 January.

¹⁰⁴ Government of the United Kingdom 2020. *Government response to the Cairncross Review: a sustainable future for journalism*.

¹⁰⁵ Ibid.

¹⁰⁶ Independent Publishers Taskforce 2019. *Supporting public interest news: a blueprint*. IMPRESS.

¹⁰⁷ Public Interest News Foundation 2020. PINF Emergency Fund.

¹⁰⁸ Public Interest News Foundation 2020. Our story.

¹⁰⁹ Independent Publishers Taskforce 2019.

¹¹⁰ Ibid.

partnership with local news media publishers.¹¹¹ The BBC announced that the organisation would be set up in conjunction with tech companies and that it would receive further donations from other businesses and institutions.¹¹² Though not proposing to redirect philanthropic funding, the Local Democracy Foundation would provide significant in-kind support in the form of receiving contributions to pay for the salaries of reporters who would work at commercial local news organisations.

At the time of publication of this report the Foundation has not yet been established and there is no mention of it in either annual reports from 2018/19 and 2019/20, nor in the 2020/21 annual plan.

5. Conclusion

Developing a not-for-profit journalism sector in Australia has been repeatedly recommended to and considered in parliamentary and regulatory inquiries over the past decade. Using evidence from overseas, it is commonly suggested that offering tax incentives for donations to journalism would facilitate the sector's growth. Two main forms of tax incentive have been repeatedly suggested: creating a new deductible gift recipient category for journalism; and/or creating a central philanthropic supporting news production.

There is evidence from overseas, and particularly the United States, to suggest that a not-for-profit news sector would increase media diversity and address market failure in commercially unviable practices like investigative journalism.

Evidence of the demand for philanthropic donations in Australia can be seen through the recommendations of news organisations to government inquiries. There has been very little research conducted in the Australian market, however, and no study has sought the views of Australian philanthropists and foundations. The lack of information about the amount of charitable money that might be available for the news sector is a significant barrier to understanding the potential of philanthropy for public interest journalism in Australia.

¹¹¹ Waterson J. 2019. BBC plans charity to fund local news reporting in Britain. *The Guardian*, 20 March.

¹¹² Ibid.

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5. About the Public Interest Journalism Initiative

The Public Interest Journalism Initiative (PIJI) is a non-partisan organisation established to ensure that Australia develops a sustainable ecosystem of independent journalism. It conducts research to inform practical policy solutions and public conversation on the importance of an effective, pluralistic news media of all sizes.

As a non-profit company limited by guarantee (ACN 630 740 153), PIJI is governed by its [Board of independent directors](#) and guided by its [Expert Research Panel](#) and [Policy Working Group](#). Established in December 2018, it is designed as a limited shelf-life entity of no more than five years. It operates as a major research project of the newDemocracy Foundation and [a registered charity](#) with the Australian Charities and Not-for-profits Commission (ACNC).

PIJI's research focuses on the three themes in public interest journalism: assessment of media diversity; community value and support; and investment and financial sustainability.

[Public Interest Journalism Initiative]

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