

# How Meta Extorted Australia

## Policy Briefing

May 2022

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and Reset Australia



**Reset.**  
**AUSTRALIA**

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This briefing highlights key details of whistleblower revelations about Facebook's unprecedented tactical response to the development of Australia's [News Media Bargaining Code](#) in February 2021, and the concurrent reforms that were made to the Code, all of which handed significant power to Facebook.

It appears that a piece of legislation created to require digital platforms and news businesses to negotiate 'in good faith' was negotiated in extreme bad faith, directly resulting in a weaker Code and worse deal for Australian journalism. It also undermined the federal lawmaking process. The whistleblowers' evidence squarely raises questions of civil and criminal liability for fraud.

## Three things the whistleblowers' revealed about Facebook's tactics

### I. FACEBOOK INTENDED FOR THE 'NEWS BLACKOUT' TO BE WIDESPREAD & DAMAGING

- Facebook had seven months to plan its response: this was not a rushed accident as the company's public relations team heavily pushed. Facebook created an 'ACCC response team' in August 2020. The team was put together with the sole purpose of countering the impact of the Code, timing the shutdown of Facebook pages in a way that gave maximum leverage in the legislative process.
- Facebook chose the widest possible 'news blackout': the ACCC response team had modelled different options for a take down and enacted the most extreme version, with knowledge that its impact would extend beyond news. Emergency, health and government services all suffered.
- Facebook could have reversed the widespread, damaging blackout but did not. The response team did not follow the company's usual checks and balances, such as cross checks with sensitive pages and Xcheck list, which typically prevent takedowns from causing adverse effects or 'over moderating'.
- Facebook turned off safety features that would have prevented a widespread, damaging blackout: There are automatic triggers inside Facebook's systems that detect 'over blocking' and instigate a 50% or 25% roll back in the 'blockage'. In this case, they were not triggered.
- Facebook did not offer an appeals process: Facebook normally offers an appeals process when the company blocks a page but did not in this case – leaving emergency services, health, government and civil society with no recourse.
- There was no pre-roll out trial of the news blackout: This would have tested potential damage or harm to non-news pages, but was omitted despite having had seven months of preparation.

### II. FACEBOOK KNEW THIS WAS DANGEROUS & ACTIVELY COVERED ITS TRACKS

- The 'ACCC response team' were silenced: They were required to sign an extra NDA, which is an anomaly, and were told to never put anything that could be inferred as intent in writing.

- Facebook normally undertakes a ‘post mortem analysis’ of any significant issues: This has not happened in this case, which is highly unusual. Some Facebook staff expressed concerns, and were reassured that this was an accident.

### III. THE DAMAGE WAS INTENTIONAL & CELEBRATED AS A SUCCESSFUL NEGOTIATING TACTIC

- After achieving four significant concessions, Facebook’s first action was to unblock the Australian Federal Government’s page.
- Facebook sent a note to the ‘ACCC response team’ celebrating the team’s success, noting that Facebook had ‘landed exactly’ where it wanted. Mark Zuckerberg and Sheryl Sandberg sent out their own versions of this celebratory note. (See screenshots in appendix 1). Staff who tried to remedy the issue were not included in the congratulatory emails.

## Four concessions Meta won as a result of these tactics

There is a worrying misconception that Facebook’s behaviour does not warrant outrage because the [Code](#) became law without significant changes being made. This is not true. Four changes were made to the Code at the 11th hour, after Facebook’s news blackout (see appendix 2 for more details). That these concessions were cause for celebration is testament to their significance to Facebook.

- I. **MAKING IT HIGHLY UNLIKELY ANY LARGE PLATFORMS WILL BE DESIGNATED BY THE CODE.** Platforms are only subject to the code if they are “designated” by the Treasurer. Before the blackout the Treasurer only had to consider “whether there is a significant bargaining power imbalance” between the platform and Australian news businesses. Significantly, after the blackout, the amended version of the Code states that the Treasurer also has to take into account whether the platform “has made a significant contribution to the sustainability of the Australian news industry,” meaning that making some deals in general is likely to be sufficient. More than a year into the code’s existence, no platform has been designated and many publishers that would have been able to make deals under the pre-blackout version of the Code haven’t been able to do so.
- II. **GIVING DIGITAL PLATFORMS EXTENSIVE NOTICE IF THEY WERE BEING CONSIDERED FOR DESIGNATION.** Platforms are given a full month’s notice if the Treasurer is even considering requiring them to negotiate under the Code. This gives platforms a month to continue to use their unbalanced bargaining power to strike deals, to deploy their not insignificant lobbying powers to avoid determination, and to engage in similar tactics to those from Feb 2021.
- III. **ALLOWING DIGITAL PLATFORMS TO ‘DIFFERENTIATE’ BETWEEN NEWS BUSINESSES IF THEY ‘PAY UP’.** Changes to the so-called ‘non-differentiation’ provisions empower digital platforms throughout the negotiation process, handing them both a ‘carrot’ and a ‘stick’ to bully news business to agree to unfair deals – further entrenching their unbalanced bargaining power. Before the blackout, it was much less clear that they would have been able to do this.

- IV. **FORCING A MEDIATION PROCESS BEFORE ARBITRATION CAN BEGIN.** Forced mediation presents a significant time delay and cost barrier for news businesses to access any remedies overseen by the Commission and significantly weakens the negotiating position of news businesses.

These four changes cumulatively significantly benefit digital platforms in the negotiation process, leaving the Code significantly weaker than earlier drafts and its driving rationale in the Digital Platforms Inquiry.

## Key dates in the [legislative process](#) & negotiations

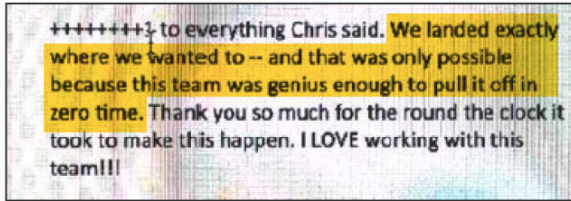
- 17 February 2021 – Bill passed through the House of Representatives; overnight, Facebook blacks out news and non-news sites
- 22 February 2021 – Amended bill introduced to the Senate, with the four concessions above
- 23 February 2021 – Facebook reverses the blackout
- 24 February 2021 – Bill passed through the Senate
- 25 February 2021 – Bill passed both Houses

## Reflections

The Australian experience provides a cautionary tale for countries around the world as they begin drafting their own news media bargaining codes. Facebook may very well be planning on engaging the same negotiating tactics. The whistleblowers' evidence also reveals that Facebook engaged in systematic deception against the public and lawmakers, raising the prospect of civil and criminal culpability for the company and senior officials that deserve investigation by State and Federal authorities.

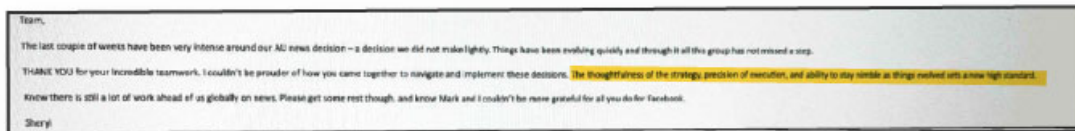
## Appendix 1: Meta's celebratory emails

As published in the [Wall Street Journal](#)

A screenshot of an email with a blue and white patterned background. The text is black, and several lines are highlighted in yellow. The text reads: "++++++ to everything Chris said. We landed exactly where we wanted to -- and that was only possible because this team was genius enough to pull it off in zero time. Thank you so much for the round the clock it took to make this happen. I LOVE working with this team!!!".

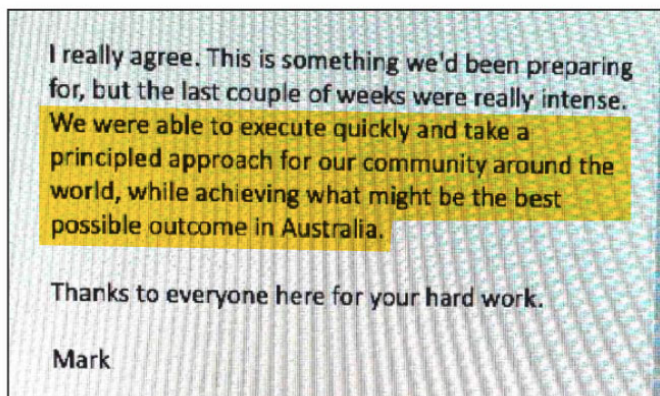
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“We landed exactly where we wanted to -- and that was only possible because this team was genius enough to pull it off in zero time.” -Sent by Campbell Brown

A screenshot of an email with a white background. The text is black, and one line is highlighted in yellow. The text reads: "Team, The last couple of weeks have been very intense around our AI news decision -- a decision we did not make lightly. Things have been evolving quickly and through it all this group has not missed a step. THANK YOU for your incredible teamwork. I couldn't be prouder of how you came together to navigate and implement these decisions. The thoughtfulness of the strategy, precision of execution, and ability to stay nimble as things evolved sets a new high standard. Know there is still a lot of work ahead of us globally on news. Please get some rest though, and know Mark and I couldn't be more grateful for all you do for Facebook. Sheryl".

Team,  
The last couple of weeks have been very intense around our AI news decision -- a decision we did not make lightly. Things have been evolving quickly and through it all this group has not missed a step.  
THANK YOU for your incredible teamwork. I couldn't be prouder of how you came together to navigate and implement these decisions. The thoughtfulness of the strategy, precision of execution, and ability to stay nimble as things evolved sets a new high standard.  
Know there is still a lot of work ahead of us globally on news. Please get some rest though, and know Mark and I couldn't be more grateful for all you do for Facebook.  
Sheryl

“The thoughtfulness of the strategy, precision of execution, and ability to stay nimble as things evolved sets a new high-standard.” -Sent by Sheryl Sandberg

A screenshot of an email with a blue and white patterned background. The text is black, and two lines are highlighted in yellow. The text reads: "I really agree. This is something we'd been preparing for, but the last couple of weeks were really intense. We were able to execute quickly and take a principled approach for our community around the world, while achieving what might be the best possible outcome in Australia. Thanks to everyone here for your hard work. Mark".

I really agree. This is something we'd been preparing for, but the last couple of weeks were really intense. We were able to execute quickly and take a principled approach for our community around the world, while achieving what might be the best possible outcome in Australia.  
Thanks to everyone here for your hard work.  
Mark

“We were able to execute quickly and take a principled approach for our community around the world, while achieving what might be the best possible outcome in Australia.” -Sent by Mark Zuckerberg

## Appendix 2: The four concessions to the News Media Bargaining Code secured by Facebook during the February 2021 News Blackout, in detail

The [Schedule of the amendments made by the Senate](#) records four changes to the Code made during the blackout. Combined, they make it extremely unlikely that a digital platform will be required to negotiate with all news media business under the Code, placing more power in the hands of platforms.

More than a year into the code's existence, no platform has been designated nor entered arbitration. These four amendments must be considered central to this, as well as to the deprivation of economic opportunity that followed for small and medium-sized news publishers.

### CHANGE 1: MAKING IT HARDER TO BE DESIGNATED UNDER THE CODE BY CONSIDERING THE 'SIGNIFICANT CONTRIBUTION' MADE BY PLATFORMS

Platforms are only subject to the code if they are “designated” by the responsible Minister.

**Before the blackout**, the Minister only needed to consider “whether there is a significant bargaining power imbalance” between the platform and Australian news businesses (sec 52E(3)).

**After the blackout**, the Minister *also* had to take into account whether the platform “has made a *significant contribution to the sustainability of the Australian news industry*” (sec 52E(3), our emphasis), such as by making agreements outside the code's final-offer arbitration process.

**The net effect of this change** is that, provided platforms *do enough* with the big news publishers, they never have to worry about the code's reach across all publishers. This change deprived many news publishers of the economic opportunities that would otherwise have flowed to them. And it gave Facebook and other platforms the economic advantage of not having to worry about all Australian news publishers.

**How has the government described this change?** Former ACCC Chairman Rod Sims described it to [ABC RN Drive](#) on 6 May 2022 as “tidying up [a] definition”, and collapsed it along with change 3 below. This considerably underplays the significance of both changes.

### CHANGE 2: PROVIDING AN EXTENSIVE NOTICE PERIOD TO PLATFORMS IF THEY ARE BEING CONSIDERED FOR DESIGNATION UNDER THE CODE

**Before the blackout**, no notice of designation was required.

**After the blackout**, the Minister must give at least 30 days' notice of intent to make a designation decision (sec 52E(5)-(6)).

**The net effect of this change** is that Facebook has a long window in which it can engage in subversive tactics, providing a severe deterrent to designation.

## CHANGE 3: ALLOWING DIGITAL PLATFORMS TO ‘DIFFERENTIATE’ THEIR TREATMENT OF NEWS, IF NEWS BUSINESSES PAY UP

One of the foundations of the Code is non-differentiation (non-discrimination) in how platforms treat news businesses — in terms of crawling, indexing and distributing their news content.

**Before the blackout**, a platform could not “differentiate” its treatment of different news media businesses (sec 52ZC). There was a notable silence on how the commercial value of deals played into this provision.

**After the blackout**, new subsections excluded the making of different commercial agreements with different news publishers from the protections against “differentiation” (sec 52ZC(4)-(6)).

**The net effect of this change** is that rather than the commitment to non-differentiation between different publishers, platforms can discriminate through commercial deals. This empowers digital platforms throughout the negotiation process, handing them both a ‘carrot’ and a ‘stick’ to bully news business to agree to deals

**How has the government described this change?** Under the [supplementary explanatory memorandum](#) this addition is described as a ‘clarification’. This undersells its significance.

## CHANGE 4: FORCING MEDIATION INTO THE NEGOTIATIONS, BEFORE ARBITRATION CAN BEGIN

Changes were made to introduce a mandatory process of mediation, which would have to fail before arbitration could even commence.

**Before the blackout**, platforms and news businesses had to bargain in good faith for three months before entering mandatory arbitration if an agreement wasn’t reached. There were no requirements for mediation and news businesses could notify the Commission that arbitration about the remuneration issue should start after three months of negotiations had failed, or if they and the digital platform agreed arbitration was necessary after 10 days (sec 52ZL(2) of second draft).

**After the blackout**, if agreement isn’t reached during three months of bargaining, the parties must enter into mediation (an additional stage) before they can enter an arbitration (Subdivision BA – Mediation).

**The net effect of this change** is to further delay the economic opportunity for news businesses. It imposes further stages of disadvantage on small news businesses and start-ups whose resources will not match those of platforms. Forced mediation presents a significant barrier for news businesses to access any remedies overseen by the Commission, and significantly weakens the negotiating position of news businesses

**How has the government described this change?** Former ACCC Chairman dismissed it as relatively minor, saying it was ‘fine’ when interviewed on 6 May 2022.



## Appendix 3: Supporting Extracts from Whistleblower Aid and the Wall Street Journal

- The existence of the ACCC response team is asserted by documents published by [Whistleblower Aid](#)

**February 18** — Facebook’s official “ACCC Response Team” posts in the SEV manager that the takedown is going according to plan.

**February 18 to 21** — Facebook’s ACCC Response Team deflects and neutralizes efforts by other Facebook staff to diagnose or fix the overblocking.

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- The [press release](#) published by Whistleblower Aid states that Facebook’s intent ‘to maximize leverage in negotiations.’

special non-disclosure agreements in anticipation of the actions. Facebook departed from its typical practice to initiate the lockdown before the legislation would be taken up by the Senate in order to maximize leverage in negotiations.

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- The deliberate strategy to block more than news is demonstrated in the [Wall Street Journal article](#) stating that Facebook ‘deployed an algorithm for deciding what pages to take down that it knew was certain to affect more than publishers.’

Despite saying it was targeting only news outlets, the company deployed an algorithm for deciding what pages to take down that it knew was certain to affect more than publishers, according to the documents and people familiar with the matter.

Instead of using Facebook’s long-established database of existing news publishers, called News Page Index, the newly assembled team developed a crude algorithmic news classifier that ensured more than just news would be caught in the net, according to documents and the people familiar with the matter. “If 60% of [sic] more of a domain’s content shared on Facebook is classified as news, then the entire domain will be considered a news domain,” stated one internal document. The algorithm didn’t distinguish between pages of news producers and pages that shared news.

The Facebook documents in the complaints don’t explain why it didn’t use its News Page Index. A person familiar with the matter said that since news publishers had to opt in to the index, it wouldn’t have necessarily included every publisher.

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- The [Wall Street Journal article](#) also states that Facebook did not follow its usual checks and balances including the use of ‘whitelists’

Facebook has many tools, such as “whitelists” that exclude some users from enforcement efforts, including [XCheck, which ensures that high-profile users get special treatment, as the Journal previously reported](#). “Not even considering any of these tools before implementing the ban was not a technical glitch, but a choice,” the complaints allege.

The whistleblower documents show Facebook did attempt to exclude government and education pages. But people familiar with Facebook’s response said some of these lists malfunctioned at rollout, while other whitelists didn’t cover enough pages to avoid widespread improper blocking.

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- This is corroborated by the statements in the press release issued by [Whistleblower Aid](#) that refer to not using the standard “canary process” to identify and prevent overblocking before an action.’

Unlike other lockdowns, Facebook did not use a standard “canary process” to identify and prevent overblocking before an action. And despite clear notice that the lockdown was affecting far more sites than publicly acknowledged (which ordinarily would have triggered a pause or rollback) senior executives ordered the full rollout to take effect within hours. Facebook did not develop or utilize lists of sensitive accounts that it should take care not to block for reasons of public health or safety, and did not create any formal appeals process for sites that were improperly blocked. Facebook managers told lower level staff not to make any written record of

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- Both the press release issued by [Whistleblower Aid](#) and the [Wall Street Journal article](#) state that Facebook expanded the rollout, despite normal protocol being to pause or rollback the blocking where issues were identified.

prevent overblocking before an action. And despite clear notice that the lockdown was affecting far more sites than publicly acknowledged (which ordinarily would have triggered a pause or rollback) senior executives ordered the full rollout to take effect within hours. Facebook did not

Facebook didn't halt or reverse the process. It ramped up the takedown, expanding the use of the algorithm from 50% to 100% of all Australian users over the next several hours.

“The way this whole rollout was scheduled ran contrary to standard practices for rolling out major changes that might have potential side effects,” said one of those people.

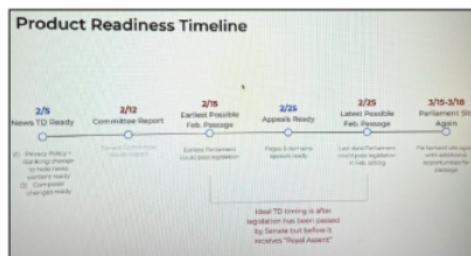
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- The press release issued by [Whistleblower Aid](#) highlights the lack of appeals process.

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- The [Wall Street Journal article](#) states the lack of appeals process didn't follow typical procedure.

The team also created a timeline for how it would roll out the takedown that showed it intended to launch before an appeals process was ready, the documents show. The move didn't follow typical procedure, according to the people familiar with the takedown.

An internal planning document shows that Facebook considered the “ideal TD [takedown] timing” was after the Australian Parliament voted on the legislation but before it was signed into law, and potentially before an appeals process was ready, which wasn't a typical process for Facebook.



Source: Internal Facebook document via Whistleblower Aid disclosure

“An appeals process was being built, but the agreement was reached before it launched,” Mr. Stone said.

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- The [Whistleblower Aid](#) press release asserts Facebook engaged in a deliberate strategy to hide information, including managers requiring staff not to make written records of the takedown's 'intent' and the issuing of non-disclosure agreements.

improperly blocked. Facebook managers told lower level staff not to make any written record of the "intent" of the takedown.

Facebook also took deliberate steps to hide key information about plans for the takedown even from its own employees, going so far as to preemptively require multiple staff members to sign special non-disclosure agreements in anticipation of the actions. Facebook departed from its

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- The [Whistleblower Aid](#) press release states Facebook failed to conduct 'a customary post-mortem review.'

After lawmakers agreed to concessions demanded by Facebook, the company failed to conduct a customary post-mortem review despite assurances that one would take place. Unbothered by



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