

Hi there

## The costs of business



The eSafety Commissioner has decided to drop the case against X, after the platform's refusal to takedown the Sydney church stabbing video. The platform had, however, blocked the video in Australia, though users have still been able to easily access the video using a VPN.

But now that the legal challenge will be abandoned, does that mean the platform is free to host graphic material, such as stabbing videos? According to Derek, the battle is not over yet, as another aspect of

this dispute will be heard by the Administrative Appeal Tribunal, and X recently suffered a loss in a separate matter concerning vilification that was heard by a tribunal in Queensland.

Then, there is the recent content deal between OpenAI and News Corp, which many [critics](#) argue is short-sighted. In this issue, Kieran also questions whether such agreements can indeed sustain digital journalism, but more importantly, he asks if there are "more 'strategic' business models available in the face of AI?"

I have other concerns, which are beyond economic models: the whiteness of AI.

Through deals between AI companies and predominantly western mainstream media, will the public be sold the same old stereotypes in new forms?

I am interested in the fair and accurate representation of communities on the peripheries of society, and the incorporation of their voice in the media not only through a white perspective, but also through agency and self-determination. It is one way to promote social cohesion, which is in [Australia's national interest](#). There is an ocean of [evidence](#) that the western media have failed communities that are already oppressed, under-represented and pushed to the margins. This is further compounded by the AI companies' dependence on the same media ([which most people no longer fully trust](#)) to supplement knowledge creation and curation. AI is supposed to make journalism better for *all*, and its impact must not be limited to financial gains for big media companies. This is not solely a technological or regulatory issue. This is a real social problem, like racism – speaking of which got ABC's Laura Tingle a lot of attention over the past two weeks, including from News Corp.

In his piece, Sacha writes about journalism's bitter-sweet relation with impartiality in the context of criticism that Tingle received for calling Australia a racist country at the Sydney Writers' Festival. Among other things, he also refers to the ABC's Editorial Policies that are, in my opinion, quite vague about the application of Standards to activities and content produced by the ABC staff in a personal capacity.



**Ayesha Jehangir**  
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## A win and a loss for X



that [here](#).

eSafety's [announcement](#) on Wednesday that it will 'discontinue' its action over the Wakeley stabbing video is a win for X. The regulator appears to have conceded that it's not worth the fight to further restrict access to the video – even with a VPN – on the platform in Australia. It seems action taken in Australia would also have affected users in other countries. This is something X vigorously opposed and on which it had an initial win a few weeks ago when the Federal Court [refused](#) to extend a temporary injunction to give effect to eSafety's application. More on

But the battle is not over. Although eSafety has decided to withdraw its application to the Federal Court to enforce its removal notice, it has renewed efforts to fight X's [parallel action](#) in the Administrative Appeal Tribunal. The platform is separately disputing the decision by the regulator

to characterise the Wakeley video as ‘Class 1’ material – on account of its violent, high impact, real-life content with apparent links to terrorism – meaning it’s refused classification and banned in Australia. This is important. Before the implementation of the Online Safety Act, decisions were made by the Classification Board; in recognition of the need for quicker responses in the online environment, the eSafety Commissioner was also given the power to make such decisions. The effect of all this is that public servants and office holders make decisions on community standards, instead of people drawn from the community and appointed to the Classification Board. As I say, the need to make the system more responsive to the online environment is understandable, but the arrangement is about to be tested.

In the meantime, there has been another interesting development in attempts to enforce Australian law on X: a Queensland Tribunal has delivered a [decision](#) that will not please the social media platform. Instead of applying the restraints on abusive material set out in the Online Safety Act, the Queensland Civil and Administrative Tribunal has been dealing with an application by AMAN, the Australian Muslim Advocacy Network, to require X to remove material that is said to breach the vilification provisions in Queensland’s Anti-Discrimination Act. And in a decision delivered on 21 May, AMAN won.

The content here pre-dates the Wakeley video. AMAN filed its complaint with the QLD Human Rights Commission back in June 2022, when X was still Twitter and before the company closed its Australian office. AMAN said that content posted on a ‘far-right anti-Muslim conspiracy blog’ – which was commented on and retweeted – contravened s 124Z of the Act because it incited hatred towards, serious contempt for and/or severe ridicule of Muslim people in Queensland on the ground of their religion. It said that the material denigrates and demonises Muslim people, characterising them as an existential threat.

The Commissioner referred the matter to QCAT in March 2023. This decision only addresses certain jurisdictional aspects, and the substantive issues – whether X’s conduct breaches the vilification provisions – are yet to be addressed. There are different strands to the jurisdictional issues, but essentially the tribunal found the cause of the complaint arose in Queensland and, in providing a service to subscribers in Queensland, X had a sufficient presence there and was carrying on business there. X had rejected the claim by AMAN that allowing users in Queensland to download material meant that it ‘engaged in conduct in Queensland’, saying that the conduct occurred at the point of upload in the US. However, the Tribunal applied the principle in *Dow Jones v Gutnick* from 2002 and a later decision from 2017 involving online games provided by a US company, supporting AMAN’s claim that the harm of the vilification (if it is established, when the full matter is heard) was caused at the point of download in Queensland.

As a foreign corporation, X had also rejected QCAT’s authority to bring it before the Tribunal and to make orders against it. X lost on this aspect as well. However, the decision does place some important limitations around the extent to which the Act applies in other jurisdictions (the ‘extraterritoriality’ aspect). The Tribunal found that the Anti-Discrimination Act does *not* have the kind of extraterritorial reach that would allow QCAT to make orders in respect of conduct by X that occurs in the US and that has no effect in Queensland.

The QCAT decision is specific to this particular Queensland Act, but the connection with the eSafety matter is interesting: it seems that Australian regulators and citizens who want to take action against international platforms under Australian law could be on safe ground when they apply to have the law enforced in respect of harm to people here in Australia, but could come unstuck if they attempt to give further geographical reach to our local laws.



**Derek Wilding**  
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## AI's news coup: quick fix or flop?



In light of the recent content deal between OpenAI and News Corp, we are yet again thrust back into the issue of financing journalism in the digital age. Only a short while ago, this issue reared its head when [Meta decided to forgo](#) renewing its deals with news organisations. Will content deals with AI companies be the saviour of news organisations? Some think not. [Tim Dunlop writes](#) that the deal with News Corp is “a triumph of short-termism and a failure of media companies to think strategically.”

One argument against these deals is that media companies are holding out in vain for clicks on links back to their websites, where visitors may then take out subscriptions or hang around long enough to generate some ad revenue. The argument follows that as people consume more content through AI, if the AI holds itself out as reputable (due to access to reliable sources or not), how many people will feel the need to verify the information?

It's hard to say. For one, we are not sure exactly how content from news organisations will be presented to end users. The [News Corp announcement](#) mentions only that OpenAI ‘has permission’ to display content. Without further detail, these deals could be nothing more than payments to stop [news organisations from suing](#) for copyright infringement. At the same time, if (or when) content consumption becomes AI-channel-dominated, how many people will search for news links via traditional or other means? As Michael [highlighted in the last edition](#), Google claims that links in AI Overviews resulted in more clicks compared to traditional search. Yet we've heard little detail about how sources in the AI Overviews are returned and, so far, have seen plenty of examples of [outright dangerous](#) information being showcased.

Presumably, Google will still be returning links to indexed web content (in addition to paid-for links). What is returned will likely still be determined by the SEO algorithm (what is most relevant to the search or query), but now, Google is actively selecting just a handful of sources to elevate through its AI offerings. It seems unlikely that this will see an uplift in link click-throughs across the entire news industry.

With this in mind, even if potentially detrimental to an open information ecosystem, the safe bet for those offered the opportunity may be to take the money, with the potential that organic growth may decrease, priced in (which may already be the case with these deals). AI companies get access to valuable human-written content, and news organisations get a new revenue source when AI may result in organic traffic decreasing regardless.

But are more 'strategic' business models available in the face of AI?

Professor of Journalism at Columbia University Jeff Jarvis [suggests](#) news companies could offer an API (a method for AI companies to request and receive content in real-time from news providers). This seems reasonable, but the choice between getting a set amount of dollars versus a potentially uncertain and fluctuating income based on usage over time may dissuade media companies from taking this approach, at least on its own (but we'll circle back to this).

A more interesting prospect is the idea of news organisations creating their own large language models (LLMs). For example, imagine conversing with the ABC's *NewsAgent*, an AI model trained on past content and which has real-time access to up-to-date reporting. This may provide a nice middle ground. The public can still get the flavour of news they are accustomed to and in an AI-packaged format, and news publishers keep traffic on their websites and potential subscriber revenue. As with most public AI models, news organisations could then also introduce paid API access to their LLMs (and underlying content if desired) for other companies, including the AI companies, to build on top of it.

This is not without its own issues, particularly barriers due to [financial constraints](#), [access to technical expertise](#), and a lack of high-quality non-English pre-trained language models. It also doesn't solve the issue of commercial interests' impacts on the journalism industry's civic role.

As Monica has [previously stated](#), “[f]inding a sustainable model is the holy grail of the information ecosystem – again, and this time, with a renewed sense of urgency!”



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# Tingle bells



At the heart of impartiality is a paradox. On the one hand, we want it. That is, we generally want our journalists to adhere to it, with [ACMA research](#) mirroring international studies to show that Australians are worried about bias and the blurring of fact and opinion. On the other hand, we don't really know what it is. That is, we struggle to define it with any precision. Impartiality, like objectivity, remains a slippery concept to apply in practice.

This paradox is particularly evident at the ABC, where the issue of impartiality raised its head again this past fortnight [following comments](#) by chief political correspondent Laura Tingle at the Sydney Writers' Festival. In the words of *Media Watch*, it prompted a [Tingle Tangle](#), complete with a News Corp pile-on that was predictably relentless. And then, for good measure, the issue raised its head once more, as the [Fair Work Commission declared](#) that Antoinette Lattouf had indeed been sacked by the ABC for a social media re-post about the Israel-Gaza war.

Impartiality denotes the absence of bias. It is one of the core values of journalism, and is explicitly referenced in most journalistic codes of practice or conduct. As journalism professor [Richard Sambrook wrote](#) in 2012, it has been 'at the heart of serious news journalism for most of the last century'. For the ABC, Australia's public broadcaster, impartiality plays a particularly significant role. Counting every Australian as a funder and stakeholder, the ABC should not be aligned with, and should not be seen to be aligned with, any political, partisan, commercial or personal interest.

The [obligation to impartiality](#) stems from the *ABC Act*, which requires the ABC to gather and present news and information that is 'accurate and impartial according to the recognised standards of objective journalism'. The ABC's Editorial Policies contain the [Editorial Standards](#), including Standard 4.1: 'Gather and present news and information with due impartiality.' Outside the ABC, many other codes don't reference this notion of 'due' impartiality. As the ABC Editorial Standards note, the notion of 'due' impartiality 'recognises that there is no absolute or formula against which to assess impartiality'. This, I would argue, is a clear and commendable recognition that impartiality must be contextual. Impartiality can never be a value that's absolute and one-size-fits-all. The Editorial Standards also draw a significant distinction between [Analysis and Opinion](#), with the former intended 'to aid understanding', and the latter a means for 'expressing a view'. The Standards are clear: 'Opinion content must be carefully managed.'

For both Tingle and Latouff, however, their reporting was not at issue. Rather, controversy arose from comments made outside their reporting: at a writers' festival event, and in a social media repost. The Editorial Standards explicitly don't apply in these contexts. As the Standards state: 'External activities of staff can, however, affect the perception of impartiality of staff and the ABC. Staff should be aware of the guidelines on the personal use of social media and external work.' In other words, if you're on a panel for bookworms or if you're reposting to X, you're not off the hook. The external work guidelines prescribe, 'Maintain the independence and integrity of the ABC'. And the ABC's personal social media guidelines prescribe, 'Do not damage the ABC's reputation for impartiality and independence'. And as Derek [wrote in February](#), the Standards are more onerous for a 'high-risk worker' such as a journalist or program presenter.

So let's focus on Tingle's comments about the Opposition's anti-immigration policies, which led her to say that Australia is a racist country. What do we make of those? The first thing to note is that the ABC is the country's most-scrutinised news outlet. It receives mountains of complaints, most of which are dismissed. In [one inquiry after another](#), the ABC has been found to be upholding its commitment to impartiality.

In *The Conversation*, [Denis Muller was clear](#): 'Were Tingle's remarks partisan? Of course. They were statements of her opinions, clearly and obviously so. Do they reflect on her impartiality as a journalist? No.' Alan Sunderland was even clearer [in his piece](#), which didn't just defend Tingle, but celebrated her. Sunderland wrote that the ABC needs to take these criticisms seriously, and acknowledged that Tingle deserves a rap over the knuckles for her 'loose comments'. But he also commended the impartiality of Tingle's work, including [her criticism](#) of the PM, as well as [a piece](#) spelling out in more detail her criticism of Peter Dutton's migration policies.

Ok, then, three conclusions. First, News Corp should lay off the ABC pile-ons, if only for selfish reasons. [Research shows](#) that a strong public broadcaster improves levels of trust generally, and this benefits both news media and the wider public sphere. That includes staff at News Corp, who are currently suffering through a [brutal round of job cuts](#). (Besides, it's odd to attack an ABC commentator for calling Australia racist just as [a News Corp commentator](#) is lamenting an 'explosion in racism against Jews'.)

Second, Tingle was entirely entitled to make her writers' festival comments, which she had [previously made more fully](#). However, *should* she have made them? Probably not. In the context of a writers' festival, the comments had potential to damage the ABC's reputation for independence and integrity. They had potential to foster a perception of partiality. That said, it's a minor transgression, and [the statement Tingle published](#) on May 29 provided the necessary context and background.

Third, ABC management should have come to Tingle's defence more quickly and resolutely. There is precedent here, particularly with the failure to back Stan Grant in somewhat similar circumstances, [leading to his resignation](#). Sometimes, perhaps, the ABC needs to be a bit more partial to its own.



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We pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these places.





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