

**Ben Blackburn Racing public
submission to Senate Inquiry
into the influence of
international digital platforms**

Acknowledgement of Country

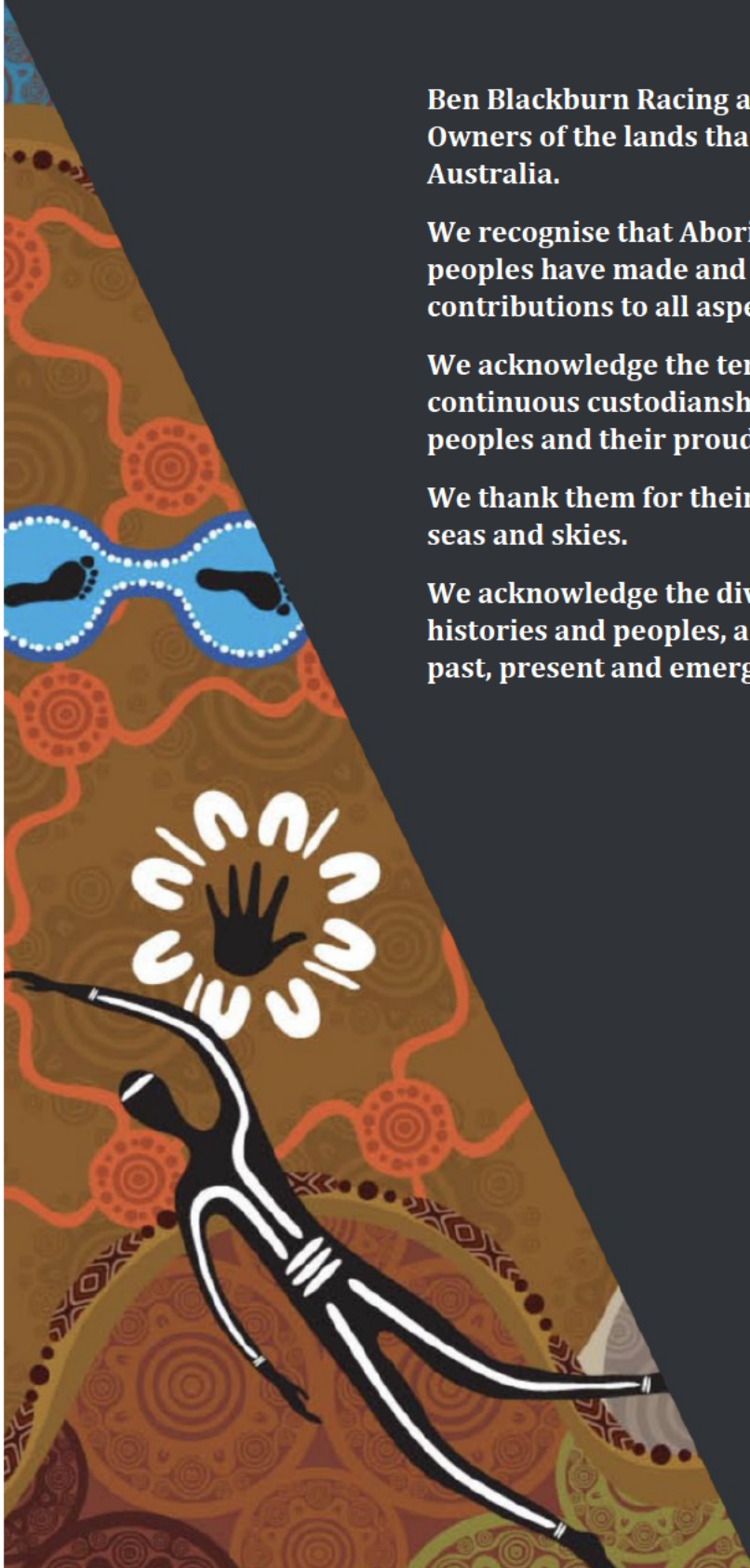
Ben Blackburn Racing acknowledges the Traditional Owners of the lands that we live and work on across Australia.

We recognise that Aboriginal and Torres Strait Islander peoples have made and will continue to make extraordinary contributions to all aspects of Australian life.

We acknowledge the tens of thousands of years of continuous custodianship and placemaking by First Nations peoples and their proud role in our shared future together.

We thank them for their custodianship of Country – land, seas and skies.

We acknowledge the diversity of First Nations cultures, histories and peoples, and we pay our respects to Elders past, present and emerging.





Thursday, 3rd November 2022

Senate Standing Committees on Economics
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Senate Committee,

PUBLIC SUBMISSION TO BIG TECH SENATE INQUIRY

I write to you in order to make this public submission to the current Senate Inquiry into the influence of international digital platforms (The 'Big Tech' Inquiry).

Senate Inquiry into the influence of international digital platforms

On 26th September 2022, the Senate referred an inquiry into the Influence of international digital platforms to the Senate Economics References Committee for inquiry and report by the last sitting day of 2023.

Terms of Reference

That the following matter be referred to the Economics References Committee for inquiry and report by the last sitting day in 2023:

The nature and extent of international digital platforms operated by large overseas-based multinational technology companies - so called 'Big Tech' - exerting power and influence over markets and public debate, to the detriment of Australian democracy and users, with particular reference to:

- a. the market shares of such international digital platforms across the provision of hardware and software services;
- b. vertical integration, or linking of multiple services, products and/or hardware, within such international digital platforms and resultant outcomes on users' ability to exercise choice;
- c. whether algorithms used by such international digital platforms lack transparency, manipulate users and user responses, and contribute to greater concentrations of market power and how regulating this behaviour could lead to better outcomes in the public interest;
- d. the collection and processing of children's data, particularly for the purposes of profiling, behavioural advertising, or other uses;
- e. the adequacy and effectiveness of recent attempts, in Australia and internationally, to regulate the activities of such international digital platforms;

- f. broader impacts of concentration of market power on consumers, competition and macro-economic performance, and potential solutions; and
- g. any other related matters.

I also agree with the Chair of the Economics References Committee, New South Wales Senator Andrew Bragg, when he commented to the Sydney Morning Herald (*'Senate inquiry to probe big technology's influence on children, consumers'*, SMH, 26th September 2022) that:

"...we must have the policy settings to protect users and ensure that Australians are not being exploited by possibly the strongest corporations in history".

The big five Big Tech platforms, Senator Bragg added:

"...have more power than the railroads and oil tycoons of the Gilded Age...Australia's Parliament must form a stronger view on what the enormous concentration of power means for our country".

Adding that Big Tech platforms: *"can and should be our partners in protecting Australians and our interests."*

On 14th February 2021, New South Wales Senator Andrew Bragg also highlighted in an online opinion piece that:

"Supermarkets don't take a can of tinned fruit from SPC and give it away for free.

"I am staggered that Big Tech companies like Google and Facebook would think they could get news content for free from news organisations and profit from advertising on the back of it.

"Australian regulators have found that for every \$100 spent on digital advertising, \$53 goes to Google, \$28 to Facebook and only \$19 goes to the others. This loss of revenue has forced cuts to newsrooms, journalists to leave the industry and media outlets going broke and closing.

"In Senate hearings we heard Google was prepared to walk away from \$4.9 billion in gross revenue in Australia rather than pay for journalism.

"As a relatively new "utility", Big Tech has largely escaped the regulatory scrutiny applied to banks, energy and telecommunications.

"In the committee hearings, I asked Google whether the company had capital requirements. The answer was no.

"I asked whether they were licensed. The answer was no.

“And I asked whether they have minimum service standards. Again, the answer was no.

“This is a light regulatory burden given the size and scope of the business in the lives of Australians. Big Tech are utilities.

“The Senate inquiry endorsed our world-first legislation which will bring Google and Facebook to the negotiating table to strike deals with media publishers.

“The proposed laws restore a level playing field between Big Tech and media outlets.

“It proposes a backstop to ensure digital platforms broker commercial deals with Australian media companies for the value they obtain from having news content in newsfeeds and search results.

“The legislation is ground-breaking because it corrects the bargaining power imbalance that Big Tech has used to bully publishers into second-rate deals in the past.

“Google has already agreed to pay for news content in France, but only after their government intervened. Yet some still question whether French publishers received a good deal or just took what they could get under the pressure of the pandemic.

“Big Tech needs to find a way to pay in Australia, instead of making threats which simply underlines their monopoly status”.

The big tech reform agenda in Australia

Australia’s Federal Parliament has been scrutinising Big Tech’s market power, with the ongoing DPI launched in 2020 to canvass areas such as social media, advertising services, and other aspects of a top-heavy digital services market that is currently managed by an existing ‘dog’s breakfast’ of regulations and laws.

That inquiry delivered its fifth interim report in September, and is set to continue through 2025 alongside the **new Big Tech Senate Inquiry** – which is currently accepting submissions and will hand down its final report on the last Parliamentary sitting day of 2023.

The Australian Competition and Consumer Commission’s (ACCC) five-year Digital Platform Services Inquiry, which continues until 2025, and the earlier Digital Platform Inquiry have resulted in sweeping recommendations on how to regulate big tech, and a number of changes.

The Digital Platform Services Inquiry is currently focussed on assessing the use of misleading environmental and sustainability marketing claims and fake or misleading online business reviews.

Last year, another inquiry focused on online harms from social media while earlier this year, a range of Australian agencies joined forces to improve scrutiny of Big Tech companies amidst claims that social media competition is increasing.

Australia has also managed to hold big tech – or at least Google – to account at least once.

In August, following action by the ACCC, the Federal Court ordered Google to pay \$60 million for misrepresenting to Android users that the ‘Location History’ setting was the only setting affecting whether Google collected their personal location data.

In reality, a second setting – Web & App Activity – was also enabling collection of data and was turned on by default, even when Location History was off, enabling Google to amass personal location data to target ads.

The \$60 million penalty was the first public enforcement of the ACCC Digital Platforms inquiry and among the largest levied for breaches of Australian consumer law in recent history.

But despite calls for similar action across the ditch in the New Zealand Parliament, nothing has been forthcoming.

United States

The new Big Tech Senate Inquiry currently underway in Australia reflects growing worldwide concern that Big Tech companies have amassed too much power and through the interconnection of complementary services, created entire ecosystems that capture, analyse, and utilise consumer data at massive scale.

The United States Congress, for example, has been evaluating proposed legislation such as the *Digital Platform Commission Act of 2022*, which would establish a five-person federal body providing “*reasonable oversight and regulation of digital platforms.*”

Those platforms, lawmakers warned:

“...have benefited from the combination of economies of scale, network effects, and unique characteristics of the digital marketplace to achieve vast power over the economy, society, and democracy of the United States.”

“Digital platforms remain largely unregulated and are left to write their own rules without meaningful democratic input or accountability.”

Throughout American history, the United States Congress has established expert agencies to oversee important parts of the American economy – from agriculture to drugs to railroads. Now amid growing concerns about the power of Silicon Valley, a Democrat Senator suggests reforming current institutions isn’t enough: **a new federal watchdog is needed to regulate the country’s most influential tech companies.**

Senator Michael F. Bennet (D-Colorado) who introduced the Digital Platform Commission Act, legislation to establish a new five-person commission responsible for protecting consumers in the age of Big Tech, said that:

"We need an agency with expertise to have a thoughtful approach here," he said.

The proposed 'agency' would have the power to interrogate the algorithms powering major tech platforms, and to set new rules to ensure the biggest companies are transparent about how they handle thorny decisions around content moderation on their platforms.

Harold Feld, the senior vice president of the consumer advocacy group Public Knowledge, proposed a new tech-focused commission in his 2019 book *"The Case for the Digital Platform Act."*

Such an 'agency' could bring more independence to oversight of the tech companies because it would include commissioners from both parties, much like the FTC or Federal Communications Commission.

Facebook CEO Mark Zuckerberg told Rep. Peter Welch (D-Vt.) at a March 2021 congressional hearing that such a new agency *"...could be very effective and positive for helping out."*

Welch has also been working on a similar proposal, and he circulated a memo to members of the House Energy and Commerce Committee in March 2021 proposing the creation of a separate agency overseeing big tech.

"I'm drafting legislation that would finally create an agency to provide fair and comprehensive regulatory oversight of social media companies, so we can create online communities that are safer and better for our society," he said.

Six principles to reform Big Tech platforms

The White House recently outlined six principles to reform Big Tech platforms and said it was encouraged to see bipartisan interest in Congress to rein in major U.S. tech companies.

The six principles, entitled "Enhancing Competition and Tech Platform Accountability," were released after Biden Administration officials earlier in the day met with experts to discuss "the harms that tech platforms cause and the need for greater accountability."

The White House said the United States needs "clear rules of the road to ensure small and mid-size businesses and entrepreneurs can compete on a level playing field."

The six principles include:

- 1. Promote competition in the technology sector.** The American information technology sector has long been an engine of innovation and growth, and the U.S. has led the world in the development of the Internet economy. Today, however, a small number of dominant Internet platforms use their power to exclude market entrants, to engage in rent-seeking, and to gather intimate personal information that they can use for their own advantage. We need clear rules of the road to ensure small and mid-size businesses and entrepreneurs can compete on a level playing field, which will promote innovation for American consumers and ensure continued U.S. leadership in global technology. We are encouraged to see bipartisan interest in Congress in passing legislation to address the power of tech platforms through antitrust legislation.

2. **Provide robust federal protections for Americans' privacy.** There should be clear limits on the ability to collect, use, transfer, and maintain our personal data, including limits on targeted advertising. These limits should put the burden on platforms to minimize how much information they collect, rather than burdening Americans with reading fine print. We especially need strong protections for particularly sensitive data such as geolocation and health information, including information related to reproductive health. We are encouraged to see bipartisan interest in Congress in passing legislation to protect privacy.
3. **Protect our kids by putting in place even stronger privacy and online protections for them, including prioritizing safety by design standards and practices for online platforms, products, and services.** Children, adolescents, and teens are especially vulnerable to harm. Platforms and other interactive digital service providers should be required to prioritize the safety and wellbeing of young people above profit and revenue in their product design, including by restricting excessive data collection and targeted advertising to young people.
4. **Remove special legal protections for large tech platforms.** Tech platforms currently have special legal protections under Section 230 of the Communications Decency Act that broadly shield them from liability even when they host or disseminate illegal, violent conduct or materials. The President has long called for fundamental reforms to Section 230.
5. **Increase transparency about platform's algorithms and content moderation decisions.** Despite their central role in American life, tech platforms are notoriously opaque. Their decisions about what content to display to a given user and when and how to remove content from their sites affect Americans' lives and American society in profound ways. However, platforms are failing to provide sufficient transparency to allow the public and researchers to understand how and why such decisions are made, their potential effects on users, and the very real dangers these decisions may pose.
6. **Stop discriminatory algorithmic decision-making.** We need strong protections to ensure algorithms do not discriminate against protected groups, such as by failing to share key opportunities equally, by discriminatorily exposing vulnerable communities to risky products, or through persistent surveillance.

The European Union

Globally 'big tech' has found itself under regulatory scrutiny with an array of concerns including monopolistic behaviour, algorithm usage and impact and the collection and monetisation of data.

The European Union inked a deal earlier this year for new legislation under the Digital Services Act, which aims to protect users' rights online, and the Digital Markets Act, which aims to create 'fair, open online markets', providing a rulebook for online platforms.

The United Kingdom

The United Kingdom's proposed *Online Safety Bill*, requiring tech companies to protect users from illegal and harmful content, is expected to return to Parliament soon.

"We want it in law as soon as possible to protect children when they're accessing content online," Culture Secretary Michelle Donelan said.

The UK bill requires technology companies to protect their users from illegal content such as child-abuse images.

But rules requiring them to also tackle "legal but harmful" material, which critics say could lead to censorship, would be altered, Ms Donelan said.

Conclusion

What is clear is that in Australia, our legislators and policy makers must thoroughly examine the full impact and reach of big tech companies and then consider the potential need for further reform and stricter regulatory measures on big tech to:

- **Eliminate big tech discriminatory algorithmic decision-making.**
- **Increase transparency and accountability for big tech companies.**
- **Increase the public disclosure requirements for big tech companies.**
- **Remove any special legal protections and 'loopholes' for big tech companies.**
- **Put the safety and wellbeing of young Australians above profit and revenue in big tech product design.**
- **Limit and restrict excessive data collection and targeted advertising to young people.**
- **Consider the introduction of a new Australian Government agency which could bring more independence to oversight of the influence and decision-making structures of big tech companies and their impacts in Australia.**

Thank you very much for the opportunity to make a public submission as part of the current Senate Inquiry into the influence of international digital platforms.



Mr Ben Blackburn
Managing Director
Ben Blackburn Racing

