



23 September 2022

Australian Competition & Consumer Commission
Digital Platforms Branch

By email: digitalmonitoring@accc.gov.au

Nine's Submission to the ACCC – Digital Platform Services Inquiry - March 2023 Report on social media services

Nine welcomes the opportunity to provide its submission to the Australian Competition and Consumer Commission's issues paper on social media services.

Nine is a trusted Australian media company which produces Australian and international news, sport and entertainment content which is loved and relied upon by Australian audiences. Nine is Australia's largest locally owned media company and it plays a vital role in informing and entertaining Australians across all metro and regional areas through our:

- broadcast TV service, our regional affiliate WIN, our remote affiliate Imparja and delivered over the VAST satellite network;
- broadcast radio stations;
- print masthead publications (including The Sydney Morning Herald, The Australian Financial Review, The Brisbane Times, The Age and WAtoday); and
- 9Now, digital masthead publications and our dedicated news websites available throughout Australia.

A recent report published by Deloitte¹ has found that 99% of Australian households can access commercial television, and that 78% of Australian households can access online content. Nine's Publishing mastheads also reach around 12 million readers on average every month².

Nine has previously made submissions about how the sustainability of delivering Australian news, sport and stories is currently under threat due to the substantial market power held by the digital platforms and the anti-competitive conduct of the digital platforms - including their conduct in the social media services industry.

Nine is an unavoidable trading partner with Meta (through both Facebook and Instagram) as well as with other social media platforms such as TikTok and Google's YouTube. These social media platforms are essential in the distribution of trusted news content to Australian consumers.

Australian consumers are at risk of not being able to find or access Australian news, sport, events of cultural significance and unique Australian stories and content unless this unfair market dynamic is addressed. There is also a significant risk of harm to consumers unless changes are made to the way in which fake news and scam advertisements are treated by social media platforms.

¹ Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, September 2022

² Roy Morgan Research; People 14+ for the 12 months ending June 2022

ACCC Consultation question 1: Who are the most significant suppliers of social media services for users in Australia? Has this changed over time?

ACCC Consultation question 3: What are the main reasons that users use social media services? For example, is it to connect with individuals they know outside of the social media platform, or to connect to previously unknown groups of people?

ACCC Consultation question 4: Do particular events influence users' use of social media services, for example, during natural disasters or the COVID-19 pandemic?

Since the ACCC published its groundbreaking Digital Services Inquiry Report in 2019, there have been some changes to the social media services market, but overall the power imbalance held by Meta is still as strong as it was in 2019.

Meta owns and operates Facebook and Instagram - it is essential for Nine, and other Australian news businesses, to be able to distribute our trusted news content on these social media platforms and equally important for Australian consumers to be able to access our trusted news content on these social media platforms.

A recent report³ has confirmed that:

- Facebook is still the most popular social media platform (with 67% of Australians regularly accessing Facebook, and 47% of Facebook users using Facebook to access news content);
- Facebook messenger is similarly popular (with 51% of Australians regularly accessing Facebook messenger, and 22% of Facebook messenger users using it to access news content);
- Instagram is also a powerful social media platform for accessing news (with 35% of Australians regularly accessing Instagram, and 32% of Instagram users using Instagram to access news content)

YouTube (owned by Google) continues to be a powerful social media platform - with 89.3%⁴ of Australians regularly using YouTube. Of those YouTube users, 34% use it to access news content⁵. YouTube also announced that 17 million Australians watched YouTube in May 2022 and they consumed that content "on every screen – desktop, mobile and increasingly the largest screen in the house"⁶ - making YouTube one of the most significant suppliers of social media services in Australia. Despite this market power, it has not detracted from the market power held by Meta.

Since 2019, new and powerful social media platforms have also entered the Australian market - Australians' use and reliance on TikTok has escalated significantly since 2020. Whilst only 15% of Australians use TikTok, 34% of TikTok users access news content on TikTok. TikTok is arguably the fastest growing social platform currently in the market - in 2020 only 7% of Australians were using TikTok - meaning its use amongst Australians has doubled in the space of 2.5 years.

³ Park, S., McGuinness, K., Fisher, C., Lee, J. Y., McCallum, K. & Nolan, D. (2022). Digital News Report: Australia 2022. Canberra: News & Media Research Centre, University of Canberra.

⁴ <https://mumbrella.com.au/facebook-and-youtube-top-potential-reach-for-australian-ads-online-721913>

⁵ Park, S (n2)

⁶ <https://www.cmo.com.au/article/701022/youtube-pitches-reach-attention-brand-building-credentials-during-brandcast-event/>

It is particularly important to recognise that the use and popularity of social media services differs between age groups:

“ Facebook is the most popular platform to get news across all generations. Instagram remains a popular source of news among younger generations; one fifth of Gen Z (20%) and Gen Y (22%) use it for news compared to 11% of Gen X and only 3% of Baby Boomers. One in eight Gen Z use TikTok for news, which has remained the same since last year”⁷

I am instructed that TikTok does not currently participate in the fair remuneration for news content from Australian news media companies. In circumstances where there is clear data supporting the surging popularity of TikTok (especially) amongst younger users accessing news content, it is vital that the rapidly growing and unfair market power of TikTok is recognised by the ACCC in this report, that TikTok is recognised as an unavoidable business partner of Australian news media businesses and that TikTok is designated under the News Media Bargaining Code.

Recognising this power imbalance and designating TikTok would serve a number of public policy benefits including supporting the sustainability of Australian news content and also keeping Australians (especially younger Australians) well informed with trusted news content. Nine submits that despite new entrants coming into the social media market, there is no easing of pressure in terms of the power imbalance between those social media platforms and Australian news media companies. If anything, the market imbalance Australian news media businesses are facing is getting worse - with even more gatekeepers to our news content to overcome before it can reach our audiences.

In addition to the above, Nine has found that in times of crisis, Australians need access to trusted news content - the availability of local and Australian news during these times is particularly important. During the recent bushfires, flooding, the COVID-19 pandemic and the 2021 Federal Election, Australians needed trusted and up-to-date news - in some communities sharing relevant local news on social media during times of crisis brings people together, but also provides important information to people affected by the crisis. During these times of crisis Nine had a significant increase in direct and indirect audience traffic to our various news sources.

Nine submits that social media services are a truly essential part of distributing news content - and therefore a must have for Australian news media businesses, and also for a large proportion of Australians who rely on these social media platforms for their news content.

For all of these reasons, Meta (Facebook and Instagram), YouTube and TikTok are all currently unavoidable business partners for Nine.

ACCC Consultation question 9: To what extent do features and related services offered by social media platforms (such as e-commerce or gaming) compete with other (non-social media) digital platforms for users? Are the services that non-social media platforms provide a substitute for some of the features and services on social media platforms?

It is essential that Nine’s trusted, Australian and local news is accessible and available to the Australian public. Nine distributes its news content through broadcast television and radio, linear and catch up television streaming (through our BVOD platform 9Now), digital radio and streaming (DAB+ and station apps), publications (print and digital mastheads such as The Australian Financial Review, The Sydney Morning Herald, The Age, Brisbane Times and WAtoday) as well as through our digital sites such as nine.com.au.

⁷ Park, S (n2)

Nine produces news content which is created to the highest codes and standards⁸ requiring impartiality, commercial disclosure and accuracy - ensuring that it is news that Australians can trust and rely on.

Our Nine platforms distribute Australian news and content to make it accessible for all Australians, regardless of the medium through which they choose to consume it.

Australians also have a strong preference for consuming news content through social media platforms - without designation of social media services (or a statement of expectation made by the Treasurer) under the news media bargaining code, there is no incentive for social media platforms to enter into commercial negotiations with Australian media companies for the monetisation of news content or to continue existing arrangements following the end of existing terms.

This is a significant threat to the ongoing sustainability of Australian news media businesses, in circumstances where there are clear trends that establish that Australian consumers rely on social media platforms to access and consume Australian news content from trusted news sources.

ACCC Consultation question 12: To what extent do users engage with social media services through apps, as opposed to mobile or desktop web browsers? How important is it for social media platforms to offer their services through apps, web browsers, and both?

Nine submits that Australians accessing its content on social media platforms, are most likely to do this through a mobile phone application for that social media platform (rather than through a web browser).

In both 2020⁹ and 2022¹⁰ Nine made submissions in relation to the ACCC's consultations on app marketplaces.

Nine submits that the ACCC must consider the complex, inextricably linked and cumulative impact that Australian news media businesses are facing across different markets:

- Nine submits that most users of social media services access those applications through their smartphones, devices and connected TVs
- The app stores (Apple App Store, Google Play Store and connected TV app marketplaces) are unavoidable business partners for Nine
 - Google and Apple controlled operating systems and their accompanying app stores account for 99% of smartphones worldwide¹¹. As a result, app developers essentially have no option but to list in the App Store and Google Play Store.
 - Apple prohibits apps not in the App Store and developers are required to adhere to Apple's very strict rules in order to reach any iPhone users
 - Google allows third-party installations to Android phones, but confronting disclaimers prior to installation of non-Play Store apps severely limits app producers' ability to reach Android users
- Without agreeing to, and complying with the terms and conditions of those app marketplaces, Nine cannot reach its audience on those devices.
- There are significant financial consequences of being accessible in those app marketplaces
 - A 15% and 30% commission on subscriptions through app marketplaces significantly

⁸ *Commercial Television Code of Practice, Commercial Radio Code of Practice and the Australian Press Council Standards*

⁹ <https://www.accc.gov.au/system/files/Nine%20%2816%20October%29.pdf>

¹⁰ <https://www.accc.gov.au/system/files/DPB%20-%20DPSI%20-%20September%202022%20report%20-%20Submission%20-%20Nine%20-%20Public.pdf>

¹¹ ACCC Digital Platforms Inquiry report

undermines the commercial benefit derived by Nine from these apps. In the case of Nine's subscription apps, the commission charged by app marketplaces is fundamentally for processing a payment, no other real benefits exist for consumers or Nine. This is significantly higher than other payment channels

- The app stores similarly do not provide much (or any) notice to technical changes and there is very little understanding about what technical specifications are permitted.
- Not only does Nine need to comply with each of these separate app stores Nine must also comply with the social media platform constraints including algorithm changes without warning and a general reluctance of the social media platforms to want to engage in talks for the fair remuneration of news content (in the absence of the news media bargaining code).
- Nine notes that whilst it has reached deals under the code in respect of its news content with Google and Meta, those deals are very limited - Nine still maintains its call for Facebook, TikTok and Youtube to be designated.

The cumulative effect of the above ultimately impacts the sustainability of Australian news media companies.

Nine submits that the issues it raised in its previous app marketplace submissions are all highly relevant to this particular question. In particular, that without a swift introduction of regulatory reform in respect to app marketplaces, the ever increasing imbalance held by the app marketplaces (ie. Google, and Apple) will be further exacerbated by the digital platforms' gatekeeper role between Australian businesses and consumers, and their self-preferencing threatens Australians' ability to get the news content that they are after.

ACCC Consultation question 9: Which platforms are the most significant social media platforms in Australia for advertising? To what extent do advertisers rely on social media platforms as a medium or mode for advertising?

ACCC Consultation question 11: Does advertising through social media represent a significant portion of advertising spend by Australian businesses?

ACCC Consultation question 24: Have social media platforms used their position in the supply of social media services to affect competition in related markets (for example, in e-commerce)? If so, please provide examples.

Meta (Facebook and Instagram), YouTube and TikTok are the biggest social media platforms for internet video and display advertising.

Meta is still the strongest social media platform for advertising. It was recently reported that Meta's total advertising revenue grew to \$1.1 billion from \$712.7 million in the past year.

Last month, TikTok Australia reported a 220 per cent jump in 2021 revenue to nearly \$US50 million (\$71.8 million), up from \$US15.5 million from November 2019 to December 2020, according to accounts lodged with the Australian Securities and Investments Commission. TikTok launched its local arm in Australia in November 2019.

YouTube (owned by Google) recently announced in its YouTube broadcast that 17 million Australians watched YouTube in May 2022 and they consumed that content "on every screen – desktop, mobile and increasingly the largest screen in the house."¹² In our view this makes YouTube one of the most significant social media platforms for advertising.

¹²<https://www.cmo.com.au/article/701022/youtube-pitches-reach-attention-brand-building-credentials-during-brandcast-event/>

Further, advertising through social media represents a significant portion of advertising spend by Australian businesses. It is estimated that the current BVOD advertising market is worth approximately \$426m in FY22¹³ - in comparison, it is estimated that YouTube alone has earned approximately \$2bn in ad revenue as of March 2022¹⁴. That makes the advertising spend on YouTube 4X more than the entire BVOD market.

In addition to the above, social media services use their market power (and further distort the power imbalance in related markets) by expanding their service offerings into separate but inextricably linked markets. For example, Google bundles exclusive access to YouTube video inventory with its DSP, DV360. By extending their market power in video advertising inventory supply (YouTube is thought to capture more than \$2bn of the online video market in Australia, making it an unavoidable source of video inventory supply to advertisers), they consolidate buying power in their DSP, making DV60 a must use DSP for advertisers. This:

- Extends their market power in social video services into ad technology markets; and
- Means Google can then control the allocation of advertisers' budgets across YouTube and 3rd party inventory supply - giving them both the ability and the incentive to self preference their own inventory.

A significant part of Nine's ability to remain sustainable, and to continue to bring Australians trusted news content, is based on being advertiser funded. Restrictions on Nine's ability to advertise around its news content on social media platforms and revenue restricting arrangements such as revenue-sharing arrangements with social media platforms, both detrimentally impact the sustainability of Australian news media companies. Similarly, Nine's ability to generate revenue from its news content from consumer subscriptions is severely undermined by the proliferation of news content on social media platforms. Users can habitually read headlines and snippets of paywalled news stories on social media platforms without financially contributing to the creation of the content. This creates value for the user and the platform, but the value exchange does not extend to the content originators.

As noted by the ACCC and Treasury, it was essential that the News Media Bargaining Code was introduced to encourage Google and Facebook to enter into commercial negotiations in respect of the monetisation of trusted Australian news. Nine does not believe that without the News Media Bargaining Code being introduced, many (if any) commercial agreements between the digital platforms and Australian media companies would have been made. Continuation of this source of revenue is critical to the sustainability of news media in Australia.

Whilst Nine was able to negotiate deals with both Google and Facebook, there is little to no incentive for social media platforms (such as TikTok) to enter into commercial negotiations for fair remuneration of news content as they have not been designated and have not been named as liable to designation. TikTok has so far refused to engage in any commercial conversations with Nine about the fair remuneration for Nine news content appearing on its social media platform.

As set out in Nine's recent submissions to Treasury's review of the News Media Bargaining Code, Nine believes that it is critical that this important legislation must be maintained - and in some areas strengthened - to ensure that fair remuneration continues to be received for the content created.

Currently, the social media platforms are not operating on equal footing - it does not make sense that other powerful and omnipresent social media platforms that rely on disseminating trusted news content do not have to pay for that content. Nine maintains that social media is a fast-paced environment which is not the same as it was in 2019. It is critical that other powerful players such as TikTok and YouTube are included in any designation, or statement of expectations, under the News Media Bargaining Code.

¹³ <https://thinktv.com.au/news/total-tv-advertising-market-records-4-3-billion-for-12-months-to-june-2022/>

¹⁴ <https://www.mi-3.com.au/02-03-2022/youtube-eyes-2bn-australian-ad-revenues-its-adsloads-surge>

ACCC Consultation question 27: Has the development of social networking features and related services by social media platforms led to new consumer harms, and/or exacerbated existing consumer harms?

ACCC Consultation question 30: Are businesses impacted by potentially misleading and/or deceptive claims through display advertising, including sponsored advertising or posts featuring influencers?

ACCC Consultation question 31: What is the process for consumers and business users to report potentially misleading and/or deceptive claims in advertising on social media, and what role do social media platforms play in these processes? How effective are these processes?

Australian consumers are increasingly at risk of receiving fake news and scam advertising when using social media platforms. We have included (in **Attachment A** to this submission) examples of scams that have appeared on social media platforms involving the misuse of trusted Nine news brands and talent.

Nine is concerned that there are no adequate policies or procedures used by the social media platforms to stop, track or hold accountable advertisers on their platforms. Scammers are well aware that Australians trust Nine and other commercial broadcasters and independent publishers, and are taking advantage of that trust by misusing our brands and talent.

Given the significant risk of harm to consumers, Nine submits that the ACCC needs to impose upon social media platforms mandatory takedown procedures that are immediate in effect. Nine's experience with requesting that these fake advertisements be removed has been unsatisfactory, and I am instructed that it is Nine's experience that these fake advertisements are permitted to remain visible and accessible to Australian consumers unless Nine takes active steps to request that they be removed from the platform. There is no timeframe in which these fake advertisements must be taken down, and there is no provision of information that assists with tracing the advertisers so that appropriate legal action can be taken.

Nine would strongly encourage the ACCC to make recommendations similar to the recent recommendations in the Stage 2 Deformation Reforms¹⁵, including:

- A requirement that the social media platforms have a mechanism in place to lodge a complaints notice regarding the fake advertisement
- That the social media platform is required within 14 days of receiving the complaints notice to provide the complainant with sufficient information to enable proceedings to be commenced against the poster

In addition to the above, the ACCC should also recommend that social media platforms must remove any content that is identified as a fake advertisement within 24 hours of receiving such a request to reduce and prevent further consumer harm.

ACCC Consultation question: Any other comments

In addition to the points raised above about social media platforms lacking any meaningful technical support or communication channels, it is also essential that the social media platforms are required to give a minimum amount of notice to any changes to their services which may affect businesses who rely upon them. For example, often businesses are not notified about significant algorithm changes

¹⁵ Stage 2 Review of the Model Defamation Provisions Part A: liability of internet intermediaries for third-party content

which preference one type of content over another. If Nine had been creating and preparing news content on the basis that it would be preferenced in the algorithm, changing that algorithm to preference other content would significantly and detrimentally impact the ability of Nine to reach audiences and generate revenue and referral traffic.

A particularly concerning example of the impact that an algorithm change can cause, is a recent change made by Instagram¹⁶. I am instructed that Meta does not provide end users notice of algorithm or preference changes, even when the impact of the changes can cause huge financial consequences and act as a punitive deterrent for businesses unless they change the way their business operates and creates content on Instagram. Having content “de-prioritised” or “de-preferenced” has an enormous impact on Australian news media companies - in circumstances where it is not always possible to create content specifically for that platform (ie. when timing is of the essence for breaking news and emergency events). Australian businesses are left with little choice - either change the way the business operates on that platform (which has so far always been reactionary resulting in time lost to adapt to that change and which is in many instances costly and requires additional resources and time), or risk not having your trusted news content shared or viewed.

Disabling comments also results in less user interactions on social media platforms, which in turn lessens the likelihood of users being served that content. Australian news media businesses have in some circumstances needed to make a very difficult decision to either face the risk of defamation proceedings (if a social media user makes a defamatory comment on the post) or alternately not generating much traffic from the post by turning off the comments (which in turn affects advertising revenue and referral traffic). The current laws surrounding this are not adequate to address the risk faced by Australian media companies who post their news on social media platforms.

For all of these reasons, unless the significant power imbalance held by the social media platforms is corrected, Australian consumers are at a significant risk of harm, and Australian media companies are at risk of not being able to remain sustainable.

Please do not hesitate to contact me if you would like any further information or would like to discuss this matter.

Yours sincerely

Penelope Hobart

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¹⁶ <https://www.theverge.com/2022/4/20/23034356/instagram-ranking-reels-original-content-tiktok>

Attachment A

Examples of unauthorised use of 9News branding and talent

Georgie Gardner - Myan Diamonds <https://fb.watch/f7Ya6enQVZ/>



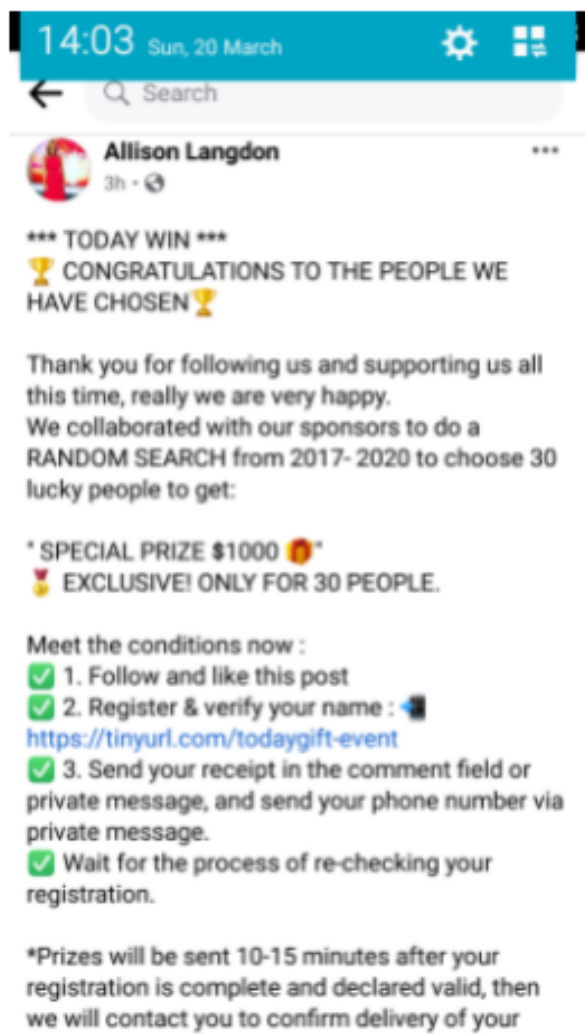


Unauthorised Instagram Accounts (Since been removed)

<https://www.instagram.com/ninenewssydney/>

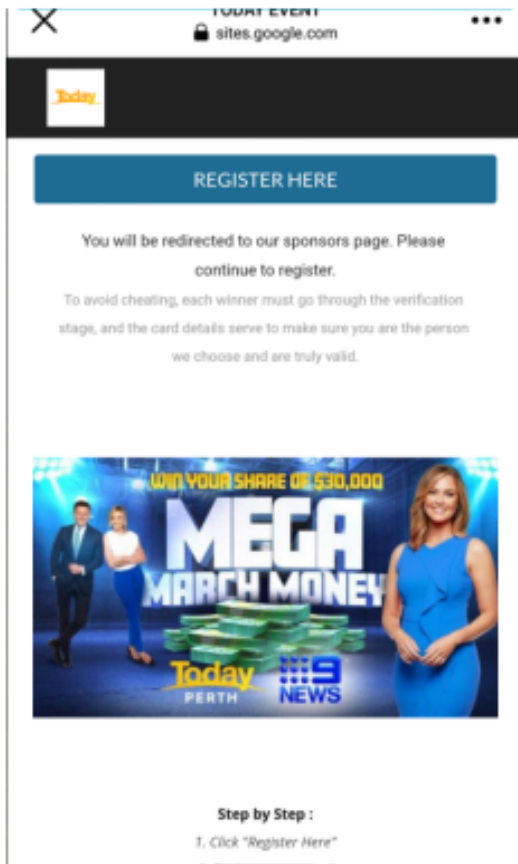
<https://www.instagram.com/ninenewsmelbourne/>

Fake Allison Langdon Account - Encouraging people to enter a fake competition to win money



The screenshot shows a mobile phone interface at the top with the time 14:03 and date Sun, 20 March. Below the status bar is a search bar with a magnifying glass icon and the word "Search". The post is from a profile named "Allison Langdon" with a profile picture of a woman and a red heart icon. The post text reads: "*** TODAY WIN *** 🏆 CONGRATULATIONS TO THE PEOPLE WE HAVE CHOSEN 🏆". Below this is a paragraph: "Thank you for following us and supporting us all this time, really we are very happy. We collaborated with our sponsors to do a RANDOM SEARCH from 2017- 2020 to choose 30 lucky people to get: * SPECIAL PRIZE \$1000 🏆 * 🏆 EXCLUSIVE! ONLY FOR 30 PEOPLE." This is followed by a list of conditions: "Meet the conditions now : 1. Follow and like this post 2. Register & verify your name : 📄 <https://tinyurl.com/todaygift-event> 3. Send your receipt in the comment field or private message, and send your phone number via private message. 4. Wait for the process of re-checking your registration." At the bottom, it says: "*Prizes will be sent 10-15 minutes after your registration is complete and declared valid, then we will contact you to confirm delivery of your".

When individuals click on the link it takes them to a page that promotes Mega March Monday, see below.



Through this link, individuals are asked to enter their bank details to have the money deposited into their nominated accounts. This account is also replying to people on their posts which can be seen in the multiple screenshots below.

Karl Stefanovic - Unauthorised Use

The advertiser - Jimmy Napes - unlawfully uses the image of our presenter, Karl Stefanovic, and misleadingly and deceptively gives the impression Karl endorses cryptocurrency, and that his career is over, neither of which is true.



QLD Rebate Finder - Unauthorised use

This sponsored / dark post was published across Facebook and uses 9News branding and IP without permission. This is deceptive and suggests we endorse this company and encourage users to click the link and submit their information and data.

Link to FB page: <https://www.facebook.com/QLD-Rebate-Finder-113637637177578>



QLD Rebate Finder

Sponsored ·



QLD HOMEOWNERS - Your postcode is approved!
Govt has authorised up to \$7,000 to be paid for your home's energy needs....see more



REBATEFINDER.COM.AU

\$7,000 to be paid for your home's energy needs

Queensland Homeowner Solar Pro...

LEARN MORE

145

145

54

21

Today Show - unauthorised use

TikTok account **thetodayshowaus** using our branding and vision of talent without permission. <https://www.tiktok.com/@thetodayshowaus>



thetodayshowaus

thetodayshow

Follow

29 Following 54 Followers 89 Likes

No bio yet.

Videos

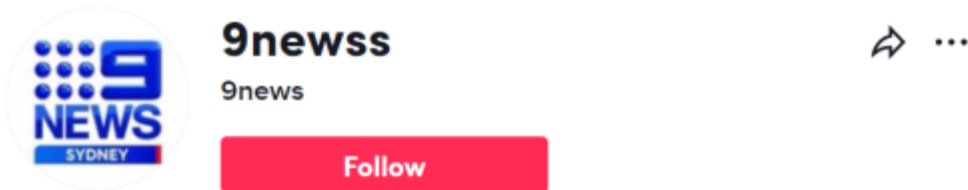
Liked



Our first tik tok!! #9today ...

9News - unauthorised use

TikTok account **9newss** using our branding and vision of talent without permission.
<https://www.tiktok.com/@9newss>



The image shows a TikTok profile for the account '9newss'. On the left is the profile picture, which is the 9NEWS SYDNEY logo. To the right of the profile picture, the name '9newss' is displayed in a large, bold font, with '9news' in a smaller font below it. To the right of the name is a share icon and a three-dot menu icon. Below the name and bio is a red 'Follow' button.

0 Following 170 Followers 219 Likes

Where the real news happens in Australia

Videos

🔒 Liked



#fyp #9news #australia ...



#fyp #9news #australia



#fyp #9news

9News Melbourne - unauthorised use

TikTok account **9newsmelb** using our branding and vision of talent without permission and claims to be the official account <https://www.tiktok.com/@9newsmelb>

9newsmelb
9 news Melbourne

Follow

21 Following 122 Followers 65 Likes

Official 9 news Melbourne TikTok
6pm weeknights with Pete
DM us with stories
[9news.com.au](https://www.9news.com.au)

Videos 🔒 Liked

Behind the scenes of our ... 421

Tonight in 9news at 6 Eliz... 1335
@LIZZIE_MOSS IS ON THE COAST OF PHILLIP ISLAND WITH @WILDLIFECOASTCRUISES

9 news Melbourne // Victo... 1123

Should Pete say *please Jo... 1126