

I do not want ACMA or any other government body to have the power to determine what is and what is not misinformation or disinformation or the truth online. I refer to the 'The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023' - the Bill. The Bill's definition of misinformation and disinformation is tantamount to assigning ACMA as an unelected body the power to decide what truth is. Misinformation and disinformation do not pose a threat to the safety and wellbeing of Australians, as well as our democracy, society and economy, as is being argued. We have adequate laws in place to address slander and libel.

There is no requirement for a mature and advanced liberal democracy, such as in Australia, for an authoritarian and controlling government bureaucracy to impose a new intolerance to free speech and thought, which is an attempt to silence uncomfortable voices of dissent. The definition of misinformation and disinformation in the Bill is broad and wide and assigns power to determine truth to unelected bureaucrats. The Bill gives the government the power to censure and silence all Australian individuals.

Common law

Australians enjoy common law protection. An established principle of statutory interpretation in Australian courts is that Parliament is presumed not to have intended to limit fundamental rights, unless it indicates this intention in clear terms. This includes freedom of expression.

Freedom of information, opinion and expression

This Bill is a direct contradiction to the principle of freedom of expression already enshrined in the UN's *International Covenant on Civil and Political Rights* (ICCPR) (1966), Article 19: "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. ... It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals."

General comment 34, from the ICCPR, emphasises that freedom of expression and opinion are the foundation stone for a free and democratic society and a necessary condition for the promotion and protection of human rights.

Constitutional law

While the Australian Constitution does not explicitly protect freedom of expression, the High Court has held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution. In *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 and *Australian Capital Television Pty Ltd v the Commonwealth* (1992) 177 CLR 106, the majority of the High Court held that an implied freedom of political communication exists as an incident of the system of representative government established by the Constitution.

States human rights laws

Section 15 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) states: "Every person has the right to hold an opinion without interference. Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether- (a) orally; or (b) in writing; or (c) in print; or (d) by way of art; or (e) in another medium chosen by him or her." Again, the limitation of those

rights is in regard to the rights and reputation of other persons or national security, public order, public health or public morality. But, this in no way extends to the broad definition of misinformation or disinformation as stated in the Bill.

Overseas law

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

The First Amendment to the Constitution of the United States refers to a right to freedom of speech and press freedom in more absolute terms than Article 19 of the ICCPR referred to above, or the equivalent provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms: “Congress shall make no law ... abridging the freedom of speech or of the press”

The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 is itself a threat to freedom of speech and expression. It should not become legislation or statute law in a free and democratic Australia.