

ACMA Submission

By Peter Ennis

This bill is a violation of the human rights of Australians and should be soundly defeated for the following reasons:

Reason 1:

Australia is a party to the International Covenant on Civil and Political Rights (ICCPR). ICCPR Article 19 says:

1. Everyone shall have the right to hold opinions without interference.
2. 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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

"*Necessary*" is a high bar. The Bill contains no specific particularisation of why the various powers granted to ACMA by the Bill are necessary for the purposes outlined in ICCPR Article 19, including reasons as to why less onerous approaches are not sufficient.

Reason 2:

ICCPR Article 1 says:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In today's world, freely pursuing one's economic, social and cultural development is a process intertwined with and dependent on digital platforms and the internet generally. Economic, social, and cultural development necessarily includes the interaction with, and sharing of, ideas online.

Reason 3:

ICCPR Article 18(1) says:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.

Freedom of thought necessarily entails the freedom to express those thoughts, and freedom of conscience necessarily entails the right to have access to a broad range of information which might inform that conscience.

Reason 4:

The Universal Declaration does not directly create legal obligations for countries. Australia has covenanted into those agreements, including agreeing to uphold them. Failing to do so renders our collective word meaningless in the international sphere.

In Australia, the Australian Human Rights Commission Act 1986 (Cth) created the Australian Human Rights Commission (AHRC). The AHRC is obligated to:

e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination; and

(f) to:

(i) inquire into any act or practice that may be inconsistent with or contrary to any human right; and

(ii) if the Commission considers it appropriate to do so—endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry...

The AHRC has an obligation to examine the Bill to ascertain whether it is inconsistent with any human right. Under the Human Rights (Parliamentary Scrutiny) Act 2011 all new Bills must be accompanied by a Statement of Compatibility, which assesses the compatibility of the proposed legislation with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified, including the ICCPR.

Already, the AHRC has warned that there were “*inherent dangers*” in any body – be it government, a government taskforce or a social media platform – becoming the sole arbiter of truth.

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