



Australian Human Rights Commission response to Questions on Notice

Re: Senate Environment and Communications Legislation Committee Inquiry into the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024*

Hansard text:

Senator DARMANIN: My questions are for the Human Rights Commission. Your submission states that you have a concern about freedom of expression because: ... the language of s 11(e) presumes these powers respect freedom of expression—rather than requiring ACMA's powers to be carried out with respect for it. This is a concerning precedent to set in the Objects of the Bill.

With regard to that, under the bill, I understand that an assessment of whether a code or standard is compatible with human rights must be prepared and included in the explanatory statement for a code or standard. The way I understand that, it means that effectively ACMA will be required to consider international human rights prior to making the instruments. I was wondering if you could explain the point that you make in your submission there.

Mrs Finlay: Our point is really about the wording of that section. In that it says 'to provide the ACMA with powers, which respect the freedom of expression, to take action for the purposes of this part', it assumes, on our reading, that there is that respect for freedom of expression rather than requiring that respect be imposed. So we would say it's almost reciting that respect into being rather than creating it as an obligation, and that's the concern we have about the drafting.

Senator DARMANIN: Okay. Are you aware of any other regulators who are required to do what the bill will require ACMA to do, around considering human rights before making instruments?

Mrs Finlay: I'd need to take that on notice.

Senator DARMANIN: If you would, that would be great. Thank you. Particularly on the basis that the suggestion is this would set a concerning precedent, maybe what I'd take from what you're saying—which probably goes to my next question—is around its definitions and clarity in a lot of the concerns that you've raised.

Australian Human Rights Commission response:

The Australian Human Rights Commission is aware of other regulators who are required to consider human rights when exercising their powers. A key example is the Information Commissioner, who pursuant to s 29 of the *Privacy Act 1988* (Cth) must 'have due regard to the objects of this Act in performing the Commissioner's functions, and exercising the Commissioner's powers, conferred by this Act'. The objects of the Act under s 2A include 'to promote the protection of the privacy of individuals' and 'to implement Australia's international obligation in relation to privacy'.

However, this is not directly analogous to the way that ACMA's powers are expressed under the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024*. Section 11(e) states that one of the objects of Part 2 of the Bill is 'to provide the ACMA with powers, which respect the freedom of expression, to take action for the purposes of this Part'. This does not *require* that ACMA consider freedom of expression in the exercise of its powers. Rather, it *presumes* that the powers given to ACMA respect freedom of expression.

This could be addressed by amending the Bill to more directly reflect the approach taken with respect to the Information Commissioner in the *Privacy Act*. That is, both the promotion of the protection of freedom of expression and the implementation of Australia's international obligations in relation to freedom of expression could be included as express objects of the Act and, in addition, a section could be inserted requiring ACMA to have due regard to the objects of the Act in performing the functions and exercising the powers conferred by the Act.