



Human Technology Institute

29 October 2024

By email: LegCon.Sen@aph.gov.au

Legal and Constitutional Affairs Committee

Parliament of Australia

Dear Committee members,

Legal and Constitutional Affairs Committee inquiry into the Privacy and Other Legislation Amendment Bill 2024

Response to Questions on Notice

At the Legal and Constitutional Affairs Committee hearing into the Privacy and Other Legislation Amendment Bill 2024 (the Bill), held on 22 October, the Human Technology Institute (HTI) was asked to provide comment on the submission made to the inquiry by Professor Barbara McDonald and Professor David Rolph (Submission 27).

- *Provide your views or the views of the institute with respect to the concerns raised by Professor McDonald and Professor Rolph in their submission (Senator Scarr)*
- *In particular, provide views on the evidentiary issues raised in relation to the public interest test (Senator Shoebridge)*

Submission 27 outlines a number of proposed amendments that would bring Schedule 2 of the Bill into stronger alignment with the content and intent of the Australian Law Reform Commission's (ALRC) 2014 model for a statutory tort for serious invasions of privacy.

HTI's views on key points raised in Submission 27 are as follows.

Clauses 7(3) and 7(4) – public interest test

Submission 27 proposes re-wording clause 7(3) of Schedule 2 of the Bill, so that defendants are not required to adduce evidence of public interest in every case before they may raise a countervailing public interest for the court to consider, and to make it 'abundantly clear' that the court may only find that the plaintiff has a cause of action if the court is satisfied that the public interest in the plaintiff's privacy outweighs any countervailing public interest. Submission 27 also suggests re-wording clause 7(4) to align with the approach taken under clause 7(3).

HTI endorses these proposed changes. This would better articulate the nature of the public interest test to be considered by the court, while recognising that it will not always be necessary or practical for the defendant to adduce evidence as to the public interest limb in every case.

Clause 9 – injunction power

Submission 27 proposes amending clause 9 of Schedule 2 so that the nature of the injunction power is correctly labelled (i.e., an 'injunction' rather than an 'interim injunction') and to require

a court, when deciding whether to grant an injunction, to give particular consideration to the human right of freedom of expression, rather than the broader consideration of ‘public interest in the publication of the information’. HTI endorses these suggested changes, noting that they align with a human rights-based approach, adopting tested wording from the UK *Human Rights Act 1998*.

Clause 15, 16 – journalism exemption, enforcement body exemption

Submission 27 raises a number of concerns about the breadth of the exemption for journalists in Schedule 2, noting that the ALRC did not include a separate exemption for journalism in its proposed model. HTI agrees with the thrust of these concerns, and makes recommendations to address them at page 5 of its own submission (Recommendation 2).

HTI wholly agrees with the comments in submission 27 regarding the enforcement body exemption. HTI addresses these concerns on page 5 of our submission (Recommendation 2).

Yours faithfully,

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