

# Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth)

Submission to the Environment and Communications  
Legislation Committee, Parliament of Australia

**30 September 2024**



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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal people of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input to the Environment and Communications Legislation Committee ('Committee') on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth) ('Bill').
2. The ALA made a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ('Department') in August 2023 on the Exposure Draft of this legislation.<sup>2</sup>
3. This submission from the ALA covers the following matters regarding this Bill:
  - a. Freedom of expression considerations – with regards to the proposed triennial reviews of this legislation, as well as the urgent need for a federal Human Rights Act;
  - b. Clarifying criteria, qualifiers and threshold terminology; and
  - c. Administrative review of decisions made by the Australian Communications and Media Authority (ACMA).

## Freedom of expression considerations

4. In our August 2023 submission to the Department, the ALA emphasised the need for the Federal Government and the Department to consider more closely the effects of these proposed communications reforms on freedom of expression (or freedom of speech).<sup>3</sup>
5. We acknowledge that the Federal Government and the Department have since considered this matter and have amended the Bill to address stakeholder concerns regarding the impact on freedom of expression.<sup>4</sup>
6. This section of our submission focuses on further matters regarding freedom of expression.

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<sup>2</sup> See: Australian Lawyers Alliance, Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Government, *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (21 August 2023) <[www.lawyersalliance.com.au/documents/item/2517](http://www.lawyersalliance.com.au/documents/item/2517)>.

<sup>3</sup> Ibid 7.

<sup>4</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 12 September 2024, 10 (Michelle Rowland, Minister for Communications).

## Triennial review of the legislative framework

7. The ALA supports the addition to this Bill of a requirement that this legislation must be reviewed three years after the legislation commences, and every three years thereafter.<sup>5</sup>
8. This will be important for assessing the efficacy and impact of this legislative framework, including whether the policy objectives are being met. The ALA would welcome the opportunity for stakeholders to provide feedback on this legislation to the first and all ongoing reviews of this legislative framework.
9. Further, with regard to the ALA's and many other stakeholders' concerns about last year's Exposure Draft of this Bill, the ALA supports that all future triennial reviews of this legislative framework must "include an assessment of the impact of this Part on freedom of expression".

### Recommendation

- **That stakeholder consultations be added as a requirement of the process for reviewing this legislative framework every three years.**

## The urgent need for a federal Human Rights Act

10. It is inevitable, in the ALA's view, that tensions will arise between communications reform and many internationally-accepted human rights in the context of the continued absence of a federal Human Rights Act in Australia.
11. Without adequate clarity about what human rights are protected in Australia and any limits on those human rights protections, concerns will continue to be raised – and raised frequently – about the impact of current and future Commonwealth reforms on the public's rights.
12. As such, the ALA reiterates our long-held position that the Federal Government should legislate a federal Human Rights Act as a matter of priority.

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<sup>5</sup> Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth) cl 70(1).

13. The ALA notes that earlier this year the Parliamentary Joint Committee on Human Rights, chaired by Labor MP Josh Burns, formally recommended that Australia adopt a federal Human Rights Act.<sup>6</sup>
14. The ALA considers that a federal Human Rights Act would ensure that those who wield power within Australia's federal institutions are subject to a clear set of expectations concerning the rights of people domiciled in Australia or under Australian jurisdiction and, further, that those decisionmakers would be prevented from exercising power in such a way as to infringe upon those rights.
15. A federal Human Rights Act could be a powerful tool not only in keeping society diverse, fair, respectful and inclusive, but also being an essential adjunct to the institutions of parliamentary democracy and the common law. Importantly, it would also give domestic effect to Australia's international human rights obligations, including but not limited to freedom of expression.
16. The ALA contends that a federal Human Rights Act would offer protection for the rights of the Australian public while the Federal Government can continue to pursue accountability for digital platform services regarding the dissemination of misinformation and disinformation.
17. Further, clarifying the extent of freedom of expression protections in Australia through the enactment of a federal Human Rights Act will assist the triennial reviews of this legislative framework, in particular the required analysis of the impact of these reforms on freedom of expression (as discussed above).

### Recommendations

- **That the Federal Government enacts a federal Human Rights Act, which will serve as an essential guide for pursuing impactful legislative reforms while also safeguarding the rights of those subject to the Federal Government's legislation, policies and programs.**
- **That the Federal Government legislates a federal Human Rights Act before the first three-year review of this legislation.**

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<sup>6</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Final Report, May 2024) xxi and 301, Recommendation 1.

## Clarifying criteria, qualifiers and threshold terminology

18. The ALA welcomes that the Federal Government and the Department have, based on stakeholder feedback during last year's consultation,<sup>7</sup> refined and narrowed the scope of certain criteria, qualifiers and threshold terminology in the Bill.
19. This is important so that it is clear to digital service providers and to the general public in what circumstances the ACMA's proposed new powers will be activated.
20. The ALA contends that the application of the provisions in this Bill containing criteria, qualifiers or threshold terminology which seek to pose any limitation on freedom of expression would, however, be assisted by the introduction of a federal Human Rights Act (as discussed above). The ACMA and the Federal Government could then more accurately measure the impact on human rights (such as freedom of expression) of any course of action or decision made pursuant to this legislation.

### Recommendation

- **That the Federal Government enacts a federal Human Rights Act, as discussed above.**

## Administrative review of the ACMA's decisions

21. The ALA notes that decisions of the ACMA under the digital platform rules may be reviewed upon application to the Administrative Appeals Tribunal (AAT), which will be known as the Administrative Review Tribunal (ART) from 14 October 2024.<sup>8</sup>
22. ALA members regularly represent clients who are seeking administrative review of decisions made in relation to workers' compensation, the National Disability Insurance Scheme, veterans' entitlements, social security, migration visas and refugee visas.

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<sup>7</sup> See, eg, Australian Lawyers Alliance, Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Government, *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (21 August 2023) 7 <[www.lawyersalliance.com.au/documents/item/2517](http://www.lawyersalliance.com.au/documents/item/2517)>.

<sup>8</sup> Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth) cl 15, proposed new subsection 204(4A).

23. Those ALA members report that the shortages in support staff and administration staff within the AAT has caused significant delays – including delays in AAT staff providing summons material to both applicants and respondents, which inhibits the progression of matters and compromises access to justice.
24. Further, ALA members have reported issues with the technology available to AAT staff, who in many instances have struggled to process summonsed material electronically.
25. Since this Bill proposes to classify decisions of the ACMA under the digital platform rules as reviewable decisions, the ALA contends that the Federal Government must ensure that the AAT (and then the ART) has the resources to account for additional matters coming before the AAT/ART.

#### Recommendation

- **That the Federal Government ensures the Administrative Appeals Tribunal (soon-to-be the Administrative Review Tribunal) is well-resourced and appropriately-funded – including adequate staffing and access to modern technology, in order to avoid delays and backlogs to the progression of new matters that require administrative review under this legislation, which would affect all matters generally before the tribunal.**

## Conclusion

26. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the to the Environment and Communications Legislation Committee on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth).
27. The ALA is available to provide further assistance on the issues raised in this submission.



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