Ministerial responses — Report 10 of 2024[1]

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The Hon Anika Wells MP
Minister for Aged Care
Minister for Sport
Member for Lilley

Ref No: MC24-015702

Mr Josh Burns MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
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Dear ~~Chair~~ Josh,

I refer to your correspondence of 10 October 2024 to the Minister for Health and Aged Care, the Hon Mark Butler MP, on behalf of the Parliamentary Joint Committee on Human Rights (Committee) regarding the Aged Care Bill 2024 (Bill). This matter has been referred to me as the Minister for Aged Care.

I thank the Committee for its consideration of the Bill in Report 9 of 2024. I welcome the opportunity to respond to the Committee's suggested actions.

Please find enclosed my response.

I thank the Committee for raising these issues, and trust that my response will be of assistance.

Yours sincerely

Anika Wells

29 October 2024

Encl (1)

cc: The Hon Mark Butler MP, Minister for Health and Aged Care

Aged Care Bill 2024
Responses to queries from Parliamentary Joint Committee on Human Rights
October 2024

Question	Response
International human rights legal advice **Multiple rights** **<u>Suggested action</u>** **1.28 The committee considers the human rights compatibility of this measure may be strengthened if:** **a) all key human rights treaties were included in the objects clause (paragraph 5(a)), including, at a minimum, the International Covenant on Civil and Political Rights; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Elimination of All Forms of Racial Discrimination; and United Nations Declaration on the Rights of Indigenous Peoples;** **b) all human rights protected in the international human rights law treaties to which Australia is party be specified in the Statement of Rights, including the addition of, at a minimum, the rights to life, liberty and security of person, freedom of movement, freedom of religion and freedom from restraint, and the prohibition against torture;** **c) the Statement of Rights included the right to an effective remedy for any violation of a right specified in the statement;** **d) consideration were given to removing subclause 24(3) so that on compliance with the Statement of Rights by registered providers may** **be enforceable by proceedings in a court or tribunal; and** **(e) the limitation clause in subclause 24(2) were amended to not apply to absolute rights.**	Some feedback during consultation suggested that the Objects should reference all relevant international conventions, such as: • International Covenant on Civil and Political Rights, • The Convention against Torture and Other Forms of Cruel Inhuman or Degrading Treatment or Punishment, • United Nations Declaration on the Rights of Indigenous Peoples. One of the objects of the Aged Care Bill 2024 (Bill) is to ensure that, in conjunction with other legislation, the Bill gives effect to Australia's obligations under the International Covenant on Economic Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. To make the constitutional basis for the legislation clear, the Objects only specify the international conventions relevant to the external affairs power. This does not mean that aged care does not endeavour to uphold other international conventions. Aged care services for Aboriginal and Torres Strait Islander people rely on the races power. As a result the United Nations Declaration on the Rights of Indigenous Peoples has not been referenced in the Bill. This Declaration does not need to be named in the Bill for it to continue to influence the way the Government approaches and delivers services to and with Aboriginal and Torres Strait Islander people and communities. The Declaration's relationship to the National Agreement on Closing the Gap and meaningful outcomes was discussed in the Productivity Commission's recent report on Closing the Gap.

	The statement of compatibility with human rights in the explanatory memorandum outlines how other relevant treaties are furthered by the Bill and where the Bill outlines appropriate limitations on rights. The Royal Commission in Aged Care Quality and Safety (Royal Commission) specifically stated that they did not propose that each of the rights in the Statement of Rights should be directly and separately enforceable in the courts. This is made clear in subclause 24(3) of the Bill. The Department's consultation showed that the best way to remedy a breach is quickly, informally and at the provider level. It is not intended to push older people and providers towards litigation. However, the Bill contains a clear requirement that registered providers must have practices in place to ensure the delivery of funded aged care services is in accordance with the Statement of Rights. This is supported by a registration condition, outlined in Chapter 3 of the Bill (clause 144). This condition requires registered providers to: • demonstrate through their delivery of aged care services that they understand the Statement of Rights, and • have practices in place to make sure they uphold these rights. Where this is not the case, a provider may be in breach which can lead to a number of regulatory responses, including civil penalties. Where a provider has failed to deliver services in a manner consistent with the Statement of Rights, they are also likely to have failed to comply with other specific obligations under the Bill. This may include the Code of Conduct and aspects of the strengthened Quality Standards. An older person can also make a complaint to the Complaints Commissioner if they feel that their rights have not been upheld.

Restrictive practices **Rights of persons with disability to equal recognition before the law** **Rights of person with disabilities to equality and non-discrimination, access to justice and effective remedy** **<u>Suggested action</u>** **1.54 The committee considers that in drafting the rules relating to restrictive practices, regard should be had to the committee's previous comments and recommendations on equivalent legislation.[116]**	I note the Committee's recommendation.
Restrictive practices **Rights of persons with disability to equal recognition before the law** **Rights of person with disabilities to equality and non-discrimination, access to justice and effective remedy** **<u>Suggested action</u>** **1.55 The committee considers the proportionality of this measure may be assisted were the bill amended to incorporate the additional safeguards recommended by the Royal Commission into Aged Care Quality and Safety, including that restrictive practices be prohibited unless recommended by an accredited independent expert or when necessary in an emergency to avert the risk of immediate physical harm, with any further use subject to recommendation by an independent expert.**	As drafted, clause 18 provides that the rules made regarding restrictive practices are to ensure that restrictive practices are only ever to be used as a last resort, only to the extent that is necessary, for the shortest time and in the least restrictive form, to prevent harm to the individual and others. Assessment by an approved health practitioner, and similar requirements (including additional requirements for chemical restraints) will be set out under the rules, which must be documented, consistent with the *Quality of Care Principles 2014*. The arrangements provide a quick and responsive assessment by medical practitioners, nurse practitioners and registered nurses with day-to-day knowledge of the older person. This is important as the care needs of older people in residential care are likely to change and/or deteriorate rapidly.
Restrictive practices **Rights of persons with disability to equal recognition before the law** **Rights of person with disabilities to equality and non-discrimination, access to justice and effective remedy** **<u>Suggested action</u>** **1.56 The committee recommends that the statement of compatibility be updated to provide a more fulsome assessment of the rights identified above, having regard to the committee's previous comments.**	I note the Committee's recommendation. I will consider the comments of the Joint Committee of Human Rights in relation to making updates to the Statement of Compatibility with Human Rights, particularly in relation to the concerns raised around restrictive practices.

Supporters and guardians **Rights of persons with disability to equal recognition before the law** **<u>Suggested action</u>** **1.74 The committee considers the human rights compatibility of this measure may be assisted were the bill to be amended to clarify:** **(a) what constitutes exceptional circumstances for the purposes of making a determination that a supporter has decision-making authority; and** **(b) what is meant by an 'individual's personal, cultural or social wellbeing' in the context of a decision-making supporter acting in a way that is not in accordance with the individual's will and preferences if necessary to prevent serious risk to one of those things.**	Determinations that provide a supporter with decision-making authority are not intended to be common and are only intended to be made due to circumstances that are unexpected, unavoidable and outside the control of the older person or their supporter(s). In considering make such determinations, the factors that the System Governor will consider in this regard include: • Whether the older person experienced unexpected and unavoidable circumstances, outside of their control, that have significantly impacted their ability to access and interpret information, make decisions and communicate with relevant stakeholders • whether the older person, in such circumstances, is required to make decisions under aged care legislation (e.g. do they require a new needs assessment, agreement and execution of a service agreement) <u>and</u> would delays in making those decisions likely have negative or harmful consequences for them • whether a substitute decision-maker is already authorised to make decisions for the older people through a state or territory legal instrument. Determinations will only be in effect for the time specified by the System Governor (initial period of registration is up to six months, with one possible extension of up to an additional 6 months), however those arrangements can be suspended or cancelled if the: • older person has recovered from the sudden or unforeseen circumstance that significantly impacted their ability to and interpret information, make decisions and communicate with relevant stakeholders. • System Governor is made aware of a substitute decision-maker being granted decision-making authority under a state or territory legal instrument (e.g. guardianship order).

	Such determinations are not enduring and do not negate the need for individuals to seek the establishment of arrangements under state and territory legislation, such as guardianship orders, where the older person requires more intensive decision-making support in other aspects of their life. The explanatory memorandum to the Bill provides examples of what constitutes exceptional circumstances, and these details will also be set out in departmental policy materials. Decision-making supporters are required to make reasonable efforts to ascertain the older person's wills and preferences. How this works for individuals will be determined by the older person's individual circumstances. A decision-making supporter is required to take reasonable steps to consult any other supporter of the individual (including non-decision-making supporters), and, where appropriate, any other person who assists the individual in their day-to-day life. Where there is no such person, the decision-making supporter is required to take reasonable steps to consult with any family members or other persons who have a close continuing relationship with the individual. Subclause 30(5) provides that the individual's will and preferences may only be overridden by a decision-making supporter where it is necessary to prevent serious risk to the individual's personal, cultural and social wellbeing. When this is necessary will need to be determined based on an individual's unique circumstances. For example, where the individual's cultural beliefs mean that their wish is to be in a specific location or on specific country at the end of their life, and this means withdrawing from comprehensive aged care services, the individual has a right to the dignity of risk and exercise that will. It would not be appropriate for a decision-making supporter to override that preference because they themselves do not have that cultural background.

Supporters and guardians **Rights of persons with disability to equal recognition before the law** **<u>Suggested action</u>** **1 .75 The committee recommends that consideration be given to ensuring the provision of training and guidance to supporters in order that they can support the individual to exercise legal capacity in a way that respects their rights, will and preferences and does not amount to substitute decision-making.**	I accept the Committee's recommendation. Implementing supported decision-making in aged care requires a program of educational and awareness uplift across all aged care stakeholders, including older people, their supporters and the whole aged care workforce. Supported decision-making places the older person at the centre of their decision-making and seeks to address processes and systemic factors rather than reinforce binary interpretations of an older person's legal capacity to make decisions. Initially the focus will be on supporting the transition and implementation of the new arrangements. This will include education and awareness of the older person themselves, their supporters and aged care service providers in preparation for the commencement of the new arrangements. Ongoing activities will be required to support efforts to embed the necessary behavioural change to achieve supported decision-making in aged care post implementation. The legislation contains safeguards to ensure the older person is always involved in their decision-making, and where they cannot for whatever reason, their will and preferences are central to making decisions. The registration process for supporters will require supporters to consent to and agree the obligations and duties set out in the legislation. This information will be available publicly and reinforced through the registration processes (both in writing on a registration form and through scripting via My Aged Care). A range of resources will also be published to support all parties understanding of the operational policy relating to supported decision-making. The Bill sets out review requirements (including timing) for a range of provisions including those relating to supporters. The review of the operation of the new Aged Care Act (clause 601) will provide valuable insights into the operation of the provisions, which may result in legislated changes and/or targeted education and awareness activities across the sector.

Publication of banning order **Right to privacy** **<u>Suggested action</u>** **1.93 The committee considers that the proportionality of the measure may be assisted were the bill amended to:** **(c) amend section 141 and 507 to require the Commissioner to ensure that the register contains correct and complete information, and does not include misleading information; and to empower the Commissioner to not include information on a register in certain circumstances; and** **(d) identify whether a decision to include information on a register, or to not amend the register, would be reviewable.**	The Bill, through clauses 507 and 141, establishes both the Provider Register and the Banning Order Register and requires the Commissioner to administer each of these. While it is explicitly stated in subclause 507(3) of the Bill that the Commissioner must ensure that the register of banning orders is kept up to date, it is expected that the Commissioner's full and proper exercise of their functions would see this requirement apply equally to the administration of each Register. To the extent that the information in these registers will be personal information, APP 13 in Schedule 1 of the Privacy Act also applies to the Commissioner (as an APP entity), and requires the Commissioner to ensure that any personal information they hold is accurate, up to date, complete, relevant and not misleading. It is inherent in the Commissioner keeping the registers up to date that this requires the Commissioner to ensure the information within each register is both correct and complete. However, should this obligation need to be legislatively imposed upon the Commissioner to ensure the fit and proper exercise of their functions, the Bill provides that the rules may prescribe matters in relation to the administration of these Registers, in paragraphs 141(8)(d) and 507(6)(b) respectively, which could prescribe the necessary requirements to be imposed on the Commissioner's administration of the Registers for this purpose. The Bill requires the Commissioner to include specified information within each register to provide a correct and complete record of registered providers and banning orders. The establishment and administration of these registers is necessary for the effective performance of the Commissioner's functions and the Bill prescribes the minimum information which the Commissioner would be required to hold for that purpose. Paragraph (i) of subclause 507(1) enables rules to be made concerning the inclusion of further information in the Banning Order register.

	It is intended to make rules to enable additional information to be included to address circumstances where information on the register may be accurate, but misleading, e.g. where an individual has a common name and further information, such as a date of birth, may be necessary to identify them. As the establishment and administration of the register, and the associated collection and use of personal information, are necessary to the performance of Commissioner's functions, the Bill's authorisation to collect and use that information constitutes a necessary and proportionate limitation on the right to privacy of affected individuals. It is the disclosure of personal information through publication that would most directly limit the right to privacy for affected individuals. It is intended that any privacy concerns will be addressed through rules being made concerning publication of the register (subclause 507(6)). Those rules will require or empower the Commissioner not to publish information on the register in certain circumstances with due regard to an affected person's right to privacy. As noted, the Bill requires the Commissioner to include specified information within each register to provide a correct and complete record of registered providers and banning orders. As such, it is not intended that the inclusion of information within the register would be a reviewable decision as the Commissioner is not afforded discretion as to its inclusion other than where additional information may be required to specifically identify an individual where the general information collected is not sufficient for this purpose. Matters relating to the inclusion of additional identifying information at the Commissioner's discretion, correction of information on the register, and its publication are matters dealt with in the rules (clauses 507(1)(i), 507(5) and 507(6)). The rules will also address procedural fairness matters in this regard, including whether these decisions are reviewable.

Publication of banning order **Right to privacy** **<u>Suggested action</u>** **1 .94 The committee recommends that the statement of compatibility be updated to provide a more fulsome assessment of the compatibility of these measures with the right to privacy, and in particular to set out: what safeguards would apply to these measures; whether a decision to include information on a register, or to not amend the register, would be reviewable; whether the exercise of powers related to the registers would be subject to independent oversight and review (and if so, how).**	As noted, the Committee's concerns are to be addressed primarily through rules to be made relating to management, administration and publication of the registers. The Committee's concerns will inform the consideration and explanation of the interaction of those rules with the right to privacy to be provided in the statement of compatibility associated with the legislative instrument.
Information-sharing **International human rights legal advice** **Right to privacy** **<u>Suggested action</u>** **1.114 The committee considers that the proportionality of the measure may be assisted were the bill amended as follows:** **a) amend subclause 539(7) to provide that personal information may only be disclosed for research purposes where it has been deidentified, or otherwise where individuals have consented to the disclosure of their identifiable personal information for the specific research purpose;** **b) require an independent review of the privacy implications of the information-sharing scheme after a specified period of operation;**	Subclause 539(7) provides that relevant information may be disclosed for the purposes of research into funded aged care services if conducted on behalf of the Commonwealth. The disclosure of personal information for this purpose is only considered necessary if the research cannot be conducted if the information were to be de-identified. To amend the provision as proposed would significantly alter the intended operation of this provision and result in no authorisation being available to allow relevant research that requires information about identified or reasonably identifiable individuals. We note some important research projects may involve linkage with other data sets where it is not possible to remove all risk of re-identification. Research may also extend to a large number of individuals, and it would be impractical and untimely to obtain require the consent of all individuals. Further, obtaining informed consent at the time of collecting the information is not practicable, as it would not be known at that time what future research may be proposed. To obtain consent at the time of each new research proposal would also not be practicable as it could limit the value of the research where consent was not obtained, or responses not provided. Research into funded aged care services is of significant import to enable a sustainable aged care system.

	Clause 601 provides for the independent review of the operation of the Bill, with a written report to be provided to the Minister and tabled in Parliament. This review covers the operation of the Bill as a whole, which would include Chapter 7 and the information management clauses therein. In addition, the department has engaged an external legal provider to undertake a privacy impact assessment (PIA) of the Bill, with a particular focus on provisions in Chapter 7. The PIA involves a systematic assessment of a project and identifies potential privacy risks. It also includes recommendations on how to manage, minimise or eliminate these privacy risks. These recommendations were finalised prior to the introduction of the Bill, and fed into the drafting of the Bill. I do not consider that a further independent review of the privacy implications is necessary.
Information-sharing **International human rights legal advice** **Right to privacy** **<u>Suggested action</u>** **1.115 The committee recommends that the statement of compatibility be updated to provide a more fulsome assessment of the compatibility of these measures with the right to privacy, and in particular:** **(c) what review mechanisms in the bill may have safeguard value with respect to the right to privacy, and how;** **(d) whether and how the information-sharing scheme would be subject to independent oversight, and whether such oversight would offer safeguard value in respect of the right to privacy;** **(e) to whom a person affected by the disclosure of their personal information could complain, and what remedies such entities may offer;**	Entrusted persons as defined in the Bill will, in most cases, be APP entities themselves, or (for example, in the case of contracted service providers) will be required under contractual arrangements to comply with the *Privacy Act 1988* in relation to the handling of personal information as well as being subject to the secrecy provisions of the Bill. Complaints regarding handling of personal information and any potential interference with privacy will therefore be able to be made directly to the relevant APP entities or to Office of the Australian Information Commissioner. The remedies available under the *Privacy Act 1988* will continue to apply in relation to the handling of personal information by entrusted persons who are subject to that Act. The Australian Information Commissioner's powers under the *Privacy Act 1988* to investigate complaints and make determinations in relation to interferences with privacy will continue to apply to the handling of personal information by APP entities as part of the information sharing scheme in the Bill. The purpose of the authorisations under the Bill is to provide timely services to aged care recipients, prevent or lessen threats to health and safety, and to fulfil public interest purposes.

(f) why the bill would not require the consent of an affected individual to the disclosure of their personal information under any of the proposed measures, and whether requiring the consent of individuals would be ineffective to achieve the stated objectives of the measures; and **(g) whether subclause 539(7) would permit the disclosure of identifiable personal information for research purposes as a matter of law, and why the bill does not require that individuals must consent to such disclosure.**	Requiring the consent of individuals prior to the use and/or disclosure of their personal information (either in the course of the performance of powers, functions and duties under the Act, or in order to lessen/prevent a threat to safety, health or wellbeing of an individual) would present an issue of practicality which would frustrate the purpose of the authorisations where that consent cannot be obtained. Furthermore, consent will continue to be obtained from older people at various points throughout their aged care journey, and this consent may extend to some of the authorisations set out in Chapter 7. In relation to subclause 539(7), this issue has been addressed above, however, I would reiterate that obtaining informed consent at the time of collecting the information is not practicable, as it would not be known at that time what future research may be proposed. To obtain consent at the time of each new research proposal would also not be practicable for a number of other reasons, including that it could limit the value of the research where consent was not obtained, or responses not provided, and may involve a very large number of participants. Research into funded aged care services is of significant import to enable a sustainable aged care system.

The Hon Michelle Rowland MP

Minister for Communications
Federal Member for Greenway

MS24-002054

Mr Josh Burns MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

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Dear Mr Burns

Thank you for your email of 10 October 2024 regarding the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024.

Please find enclosed my response to the Committee's suggested actions in its *Report 9 of 2024*.

Thank you for taking the time to write to me on the matter. I trust that the attached information is of assistance.

Yours sincerely

Michelle Rowland MP

5 / 11 /2024

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Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024
Responses to queries from the Parliamentary Joint Committee on Human Rights
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Suggested action	Response
1.195 The committee considers the proportionality of this measure may be assisted were:	
sections 47 and 54 of the bill [be] *amended to require* ACMA to have regard to the right to freedom of expression (as recognised under international human rights law) in approving a code or determining a standard.	**Amendment not supported** The Bill provides that approved codes and standards are legislative instruments subject to parliamentary scrutiny and disallowance. As a result, the Australian Communications and Media Authority (ACMA), as the rule maker, would already be required to consider the right to freedom of expression (along with other relevant human rights) in order to comply with its consequent obligation to prepare a statement of compatibility for the instrument. See Bill cls 47(6), 47(7); and 55(2); *Human Rights (Parliamentary Scrutiny) Act 2011* s9; *Legislation Act 2003* s15J(2)(f). Further, before a code can be approved under cl.47 or a standard determined under cl.54 of the Bill, the ACMA must be satisfied that it: • is reasonably appropriate and adapted to achieving the purpose of providing adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on the platforms; and • goes no further than reasonably necessary to provide that protection. These requirements are very similar to those set out under Article 19(3) International Covenant on Civil and Political Rights (ICCPR), which sets out the test for permitted limitations on the right to freedom of expression (amongst other human rights).

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1.196 The committee recommends that:	
consideration be given to whether the proposed scheme would appropriately protect content produced by 'citizen journalists' who are not subject to formalised editorial standards.	**Not supported** The Bill has aligned its definitions of journalism to be consistent with the professional standards test set out in section 52P of the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*. This contemplates journalism as a line of work subject to codes of practice or professional standards that relate to the provision of journalism. • The policy intent behind the exclusion is to avoid duplicating oversight for a sector that already operates under a framework of professional impartiality, accuracy and accountability requirements. • Excluding *professional news content* reflects considered policy judgements about the objective misinformation and disinformation risks posed by content originating from recognised media formats where generally material is produced: o to prioritise journalistic practice ensuring accuracy and fact-checking; o in circumstances which help ensure independent, arm's-length journalism; and o where there are established complaint resolution processes – e.g. correction notices. • The definition of *professional news content* is designed to be flexible and would extend to journalism produced locally or overseas where such activities are subject to professional standards of conduct, oversight or accountability mechanisms similar to those named on the face of the Bill (cl.16(2)(b)(i), (ii) or (iii) refer). • The right to freedom of expression of 'citizen journalists' will still be protected via broader safeguards across the Bill protecting that right. **Relevant provisions** The operative provisions of the Bill apply in relation to *misinformation* or d*isinformation*. This is relevantly defined (cl.13) as the dissemination of content using a digital service if: • the content contains information that is reasonably verifiable as false, misleading or deceptive; and • the content is provided on the digital service to one or more end-users in Australia; and • the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm; and • the dissemination is not *excluded dissemination*.

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	Where dissemination of content is *excluded dissemination*, it is effectively entirely outside the scope of the measures contained in the Bill intended to address concerns regarding the dissemination of false, misleading or deceptive information reasonably likely to cause or contribute to *serious harm* as defined in cl.14. The dissemination of *professional news content* is one of the categories of *excluded dissemination* (cl.16(1)(b)). The *professional news content* exclusion will apply to the *dissemination of content* by a person: • who produces, and publishes online • *news content* (cl.16(3)) in one of the formats specified in cl.16(2)(a) • where that person is subject to the rules of an Australian standard or code of practice analogous to those specified in subparagraphs (i), (ii) or (iii) of cl.16(2)(b). The *professional news content* exclusion can also apply to a person who produces, and publishes online, *news content* in like circumstances provided that person is subject to either: • *rules or internal editorial standards* that are *analogous* to the Australian rules specified 'to the extent that they relate to the provision of quality journalism' (cl.16(2)(b)(iv)); or • rules specified for these purposes in digital platform rules (cl.16(2)(b)(v)). The EM (pp 62-63) explains the rationale for the professional news content exclusion: *The purpose of including the professional news content exception is to not infringe on the independence of the media. The exclusion of professional news content also acknowledges that this type of content is subject to the industry's own separate and recognised editorial standards. Further, digital platform services should not be in the position of determining if professional news content is misinformation or disinformation.* The effect of extending the content exclusion to 'citizen journalists' takes such disseminations of information outside the scope of the Bill for all purposes. This would put it beyond the scope of information and reporting on instances of misinformation or disinformation, for example, not simply measures aimed at preventing dissemination of misinformation or disinformation. In such circumstances, where anyone who chooses to call themselves a 'citizen journalist'—e.g. a blogger with a smart phone—could be permitted to rely on the exclusion contemplated under cl.16, that provision would be unfeasibly broad and indeterminate, greatly reducing the efficacy of the Bill. In particular, there is greater potential for harm from the spread of content from self-described 'journalists' whose activities are not subject to any professional standards of

	conduct or for that matter mechanisms to ensure accountability. However, it should be kept in mind that dissemination from such persons on a digital service will not come within the scope of the Bill unless it also meets the *false, misleading or deceptive* and *serious harm* requirements of the Bill. It should also be noted that permitting self-described 'citizen journalists' to be exempted from the Bill risks inadvertently excluding the activities of foreign influence operations by state-based actors that masquerade as producers of legitimate journalism and greatly reducing the efficacy of the Bill. Instead, where content originates from a person covered by the criteria set out in cls 16(2)(b) and (c), that material is produced in circumstances which help ensure independent, arm's-length journalism where the potential for intentionally false or misleading material is low or negligible. In addition, where content originates under such circumstance, there are generally established complaint resolution processes that may address harms arising from the circulation of that material—for example, the issue of correction notices in relation to material found to be factually inaccurate or not prepared in accordance with fair and accepted standards of investigation or reporting. There also may be additional commercial or regulatory levers that ensure high quality journalism for bodies captured by this exemption class.
1.197 The committee recommends that:	
the statement of compatibility be updated to identify what (if any) remedy an individual may access if compliance (or purported compliance) with the proposed scheme resulted in a breach of their right to freedom of expression or privacy.	**Supported** The Statement of Compatibility will be updated to explain the remedies available, if the actions of a platform constitute a breach of either an individual's right to freedom of expression or right to privacy (as recognised under international law). When approving a code, determining a standard, or varying an approved code or a standard, the ACMA must be satisfied that the code or standard is reasonably appropriate and adapted to the purpose of providing adequate protection from serious harm caused or contributed to by misinformation or disinformation on relevant platforms, and goes no further than reasonably necessary to provide that protection (see cls 47(1)(d)(iii) and (iv), 50(1)(d)(iii) and (iv), 54 and 60(2)). This proportionality analysis involves the ACMA making an evaluative judgement about a broad range of factors, including, potentially, considerations related to the freedom of expression and the protection of individual privacy. • That exercise by the ACMA will be informed by the exercise, carried out in parallel, of the ACMA preparing a statement of compatibility for each approved code, standard or variation instrument (see cls 47(6) and (7), 50(5), 55(2), 56(2), 57(3), 58(3), 59(2) and 60(1) *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) s 9, and

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	Legislation Act 2003 s15J(2)(f). Any statement of compatibility must necessarily address the instrument's impact on freedom of expression and rights to privacy amongst any other human right that is engaged. There are further limits on the power to approve codes or determine standards aimed specifically at safeguarding core aspects of an individual's right to privacy. Relevantly, cls 45 and 46 provide that ACMA must not approve a code (or part of a code) or determine a standard where that code or standard contains requirements related to the content of private messages, the encryption of private messages, or to real-time voice communication using the internet that is not recorded. If either: • the ACMA's consideration of the relevant statutory questions (including considerations of human rights related issues) miscarries to a degree or extent involving a jurisdictional error of law; or • the ACMA approves a code or determines a standard that deals with a matter that may not be dealt with in a code or standard because of cls 45 and 46; then any person aggrieved – including an individual whose freedom of expression or right to privacy may have been infringed – may apply to a court of competent jurisdiction seeking appropriate orders, including declarations that the relevant instrument is invalid. Alternatively, a person aggrieved by an act or practice that is inconsistent with or contrary to any human right may make a complaint to the Australian Human Rights Commission ('the Commission') under s20(1)(b) of the *Australian Human Rights Commission Act 1986* (Cth) (**Human Rights Commission Act**). • The Commission has the function under s 11(1)(f) of the Human Rights Commission Act to inquire into any practice that may be inconsistent with or contrary to any human right and, if the Commission considers it appropriate to do so, the Commission may endeavour by conciliation to effect settlement of the matters that give rise to the inquiry. The Commission may draw on a range of supporting powers under ss 19A – 29 of the *Human Rights Commission Act* in any such inquiry. If a platform erroneously removes or otherwise deals with material in the mistaken belief that such action is required by a code or standard, a person aggrieved may make a complaint to the Australian Human Rights Commission.

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	This provides a targeted and effective means for addressing human rights concerns if the ACMA has approved a code or determined a standard which the Commission finds to result in a breach of human rights. In such an instance, the most appropriate course is for that issue to be resolved through its established processes, and for any changes to a code or standard to then be made accordingly. There is also the option for complaints to the Human Rights Committee of the United Nations once all domestic remedies have been exhausted.