

TO: Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

FROM: Dr Russell Blackford

E-mail:

**Consultation regarding Constitution Alteration (Freedom of Expression and Freedom of the Press) 2019**

1. I refer to the above public consultation, and thank you for the opportunity to make this submission.
2. I am an academic philosopher with a special interest in legal and political philosophy, including issues relating to traditional civil and political liberties such as freedom of religion and freedom of speech. I have published widely on these topics. In particular, my published books include *Freedom of Religion and the Secular State* (Wiley-Blackwell, 2012) and *The Tyranny of Opinion: Conformity and the Future of Liberalism* (Bloomsbury Academic, 2019). My formal qualifications include an LLB with First Class Honours from the University of Melbourne and a PhD in philosophy from Monash University, where my doctoral dissertation applied ideas from liberal theory and philosophy of law to certain topical issues in bioethics.
3. In short, I am an academic expert on issues to do with liberal theory and philosophy of law, including issues relating to freedom of speech. I am currently Conjoint Senior Lecturer in Philosophy at the University of Newcastle, though I do not, of course, purport to represent the views of the university.
4. I have studied the proposed Bill to amend the Australian Constitution, and I can express my response to it quite briefly.
5. I am generally supportive of the idea of giving greater constitutional protection to freedom of speech and expression.
6. I doubt, however, that it is helpful to make specific reference to “the press”, since this is an ambiguous expression. Historically, “the press” referred to a technology, i.e. the printing press, and not to a social institution such as what is sometimes called the “institutional press” as it exists today, i.e. large news and media corporations. Thus, “freedom of the press” historically referred to the freedom not only of newspapers and professional journalists but also of lone – often scurrilous – pamphleteers. Today, this original meaning is often forgotten, and it is often assumed that “freedom of the press” means a special freedom (or set of privileges) for professional journalists and broadcasters employed by large news and

media corporations. In fact, the freedom that should be protected is a freedom for *everyone* to use the media of mass communication to address their ideas and opinions to the public.

7. It is worth noting that the large news and media corporations operating in Australia already possess enormous wealth, influence, and power, and that this can enable them to harm individuals whose reputations are smeared or whose privacy is invaded. The psychological and financial cost of legal action to protect individual reputation or privacy against these corporations is prohibitive for most individuals, and it should not be made even more difficult.

8. In short, any constitutional amendment should clearly enhance the power of *all* citizens to use the media of mass communication to communicate ideas and opinions to the public, without further increasing the power of large news and media corporations relative to that of individual citizens.

9. At the same time, the proviso in the proposed Bill is too lax in how far it allows legislatures to interfere with the proposed freedom. The current wording which uses a formula of “reasonable and justifiable” could allow many legislative provisions that restrict individual freedom of expression more than is strictly necessary.

10. Accordingly, I propose that the current substantive provision in the draft Bill be replaced with the following words, based in part on concepts in the European Convention on Human Rights and the Canadian Charter of Rights and Freedoms:

The Commonwealth, a State or a Territory must not limit freedom of expression, which includes the freedom to hold and express ideas and opinions, and in particular to receive and impart ideas and opinions by means of present and future communication technologies.

However, a law of the Commonwealth, a State or a Territory may limit the freedom of expression only if, and only to the extent that, the limitation is

(a) reasonable and justifiable to protect individual reputation or privacy; or

(b) for any other reason, demonstrably necessary for the viability of an open, free and democratic society.

Yours sincerely,

Russell Blackford  
2 August 2021