

The Report also proposed the creation of a new right (proposal 18.5) to de-index search results, similar to the GDPR right once called the 'right to be forgotten'. The proposal is for a right to de-index search results that are (inter alia) 'inaccurate, out-of-date, incomplete, irrelevant or misleading' (proposal 18.5(iv)). If this were extended to chatbots like ChatGPT, it could throw a spanner in the works of OpenAI and its AI competitors. Indeed, as much is already happening in the European Union.¹⁴ The situation in the Australian market may turn out similarly messy.

Conclusion

ChatGPT is awesome. It has the potential to generate a great deal of good for humanity. But it also has the potential to generate a great deal of damage. That damage may be felt around the world, not just in those jurisdictions close to OpenAI.

It is entirely reasonable that Australians avail themselves over the remedies provided by Australian law when foreign companies cause them damage. That moral claim is even stronger in circumstances where foreign companies make a deliberate decision to be available to the global market, and so within the Australian market. OpenAI chooses to make ChatGPT available in Australia; its responsibility to comply with Australian law is a foreseeable and reasonable consequence of that decision.

On the subject of AI, Gary Marcus recently told *The New York Times* that '[w]e have a perfect storm of corporate irresponsibility, widespread adoption, lack of regulation and a huge number of unknowns'.¹⁵ Civil litigation, like that following Mayor Hood's defamation dispute, may fill the gap left by legislators and other regulators. If the result is that OpenAI takes steps to make sure its technology minimises harm to individuals, then I support it.

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13 Australian government, *Privacy Act Review: Report 2022* (2023) <https://www.ag.gov.au/sites/default/files/2023-02/privacy-act-review-report_0.pdf>.

14 See Jess Weatherbed, 'OpenAI's regulatory troubles are only just beginning', *The Verge*, 5 May 2023 < OpenAI's regulatory troubles are only just beginning>.

15 Cade Metz and Gregory Schmidt, 'Elon Musk and Others Call for Pause on A.I., Citing "Profound Risks to Society"', *The New York Times*, 29 March 2023 <<https://www.nytimes.com/2023/03/29/technology/ai-artificial-intelligence-musk-risks.html>>.

CAMLA Young Lawyer Committee Event Report: Journalists' Privilege Webinar

Author: Kristina Hewetson, Associate at Baker McKenzie and CAMLA Young Lawyer Committee Member

On 31 May 2023, the CAMLA Young Lawyers Committee had the privilege of hosting a fantastic webinar panel comprised of three experts to discuss the complex web of journalists' privilege in Australia. Moderated by Imogen Loxton, Senior Associate at Ashurst and CAMLA YLC Member, the panel featured:

Dr Matthew Collins AM KC,
Barrister at Aickin Chambers.

Gina McWilliams
Senior Legal Counsel at News Corp.

Paul Farrell,
Investigative Reporter at the ABC.

Gina McWilliams and Matthew Collins commenced the discussion by providing an informative history of journalists' privilege, also known as "shield law". Prior to the introduction of that law, Australia was described as "the wild west", where journalists were imprisoned for protecting their sources. Shield laws were passed into the Evidence Acts in 2011, but have subsequently been subject to frequent scrutiny.

The panel described Australia's shield laws as "Swiss-cheese law" full of loopholes and inconsistent interpretations such as the varied definitions of "journalist" in different jurisdictions. We also traversed the controversial law of Journalist Information Warrants which permit government agencies to access the metadata of journalists in order to identify their confidential sources.

Paul Farrell provided his valuable insights into how a journalist makes the assurance of confidentiality with sources, in circumstances where the laws do not provide any guidance into how to establish the privilege. Paul advised the keen audience that the most important step is to establish clearly with your source the terms on which you are speaking. He also stressed that you must also be fully prepared to fulfil the serious promise of confidentiality. Paul also spoke about the value of encryption and the difficulty in keeping sources

confidential, including balancing the need to make a contemporaneous note of the promise with the risk that this could expose the source.

When asked about the future, the panel discussed the need for a uniform law and extending the privilege to all persons engaged in acts of journalism, rather than only those engaged in the profession or occupation of journalism.

Paul Farrell and Gina McWilliams also provided interesting insights into the controversial raids on the ABC and a News Corp journalist's home. The panel spoke about how the administration of justice often trumps journalists' privilege, and the challenges this poses to public interest journalism.

Thank you to our amazing panel and moderator, and the CAMLA YLC event sub-committee (Imogen Loxton (Senior Associate, Ashurst), Anna Glen (Legal Counsel, ABC), Nicola McLaughlin (Legal Counsel, nbn) and Lucy Hughes (Senior Legal Counsel, Stan) for pulling the event together.