Response to Human Rights and Technology Issues Paper – July 2018

Consultation questions

1. What types of technology raise particular human rights concerns? Which human rights are particularly implicated?

The Internet of Things, AI, biotech (medicines, testing - in particular David's story about when they were pregnant comes to mind), Neurotech, Virtual reality and augmented reality particularly have potential serious implications for people with disabilities. Privacy is a major concern. If not accessible IOT, AR and VR risk leaving people with disabilities behind in day to day living (think smart washing machine etc.) learning (VR being used to teach in schools and University), social aspects (70% of gamers think their social wellbeing is involved by gaming) and entertainment.

The Section 3.0 Human rights and Technology states in the last paragraph that the document will 'explore human rights intersect with technology'. I am not very comfortable with this statement. Frankly if technology interferes with human rights, it should not be used.

The same section states that the aim is to 'apply the existing standards to address the technological challenges that confront us'. In my view, we need to improve the standards first to ensure they meet the needs of all Australians.

Technologies – of particular importance to people with disabilities are those that have the potential to widen the digital divide either through their lack of accessibility or their cost – examples screen readers, voice activation software, eye gaze software etc. Some of these are very expensive, and require that PWD purchase more expensive options or additional options such as screen readers or other AT. Other issues concern poor design of digital material such as websites that require complex interaction and could be difficult for PWD, hence denying them the opportunity to participate. When some people have better access to technology than others, we have the potential to widen that gap, putting people at a disadvantage.

New innovations have the tendency to be put on the market before thorough testing, relying on on-going changes, but wanting to meet the opening in the market. This places people who rely on accessible software or technology to wait until further refinements are incorporated.

Human Rights – the right to access information – UN Convention on the Rights of People with Disabilities,

The right to equal access to employment market which is becoming more digital (e.g. Seek.com and similar),

AI which uses algorithms to discriminate against people with disabilities

2. Noting that particular groups within the Australian community can experience new technology differently, what are the key issues regarding new technologies for these groups of people (such as children and young people; older people; women and girls; LGBTI people; people of culturally and linguistically diverse backgrounds; Aboriginal and Torres Strait Islander peoples)?

I would include people with disabilities in this list, cost of new technologies and the resources provided to learn new tech. For people the mistrust of changing from what they know and trust. They are more likely to stick with what they have because they know it works etc.

I don't really understand the reference to women when looking at how technology affects specific groups. I would suggest that PWD should have been specifically mentioned in the Introduction bullet points as they are specifically affected.

Currently we are placing more children with disabilities into mainstream classrooms but not ensuring that the technology and materials are accessible for them – such as portals which are notoriously inaccessible for blind or print-disabled students.

Seniors are constantly experiencing issues with technology and systems such as e-government services. Often they are uncomfortable with online systems or have a combination of disabilities that make it difficult to participate, such as having a shaky hand which makes mouse use difficult or low eyesight.

A particular concern with new technology is the potential for these technologies to improve the management of our own health. Unfortunately PWD are at higher risk of many health conditions such as Type II Diabetes due to their lack of mobility. Access to technology to allow self-monitoring such as apps that clock movement are mainly inaccessible and don't support the needs of PWD who would benefit most. Developers will be slow to improve this as they don't perceive the market justification for these modifications.

3. How should Australian law protect human rights in the development, use and application of new technologies? In particular:

   a) What gaps, if any, are there in this area of Australian law?

Require new tech to be accessible (WC's 'Silver' successor to WCAG will provide the framework…eventually). Procurement too…again Silver, hopefully adopted when available. There will always be unintended consequences.

At present, the DDA does not specifically discuss the right to access digital content. In our opinion, this should be more clearly stated, either in a revision of the DDA or a new document (such as the UK revision). A number of countries such as Canada, the UK, and Europe are re-writing their discrimination laws to reflect the right to access information, specifically digital information.

Many companies are under the false impression that DDA and the AHRC Guidelines refer only to government, even though this is not the case (e.g. Cole's accessibility case). It should be stated more emphatically – for instance the new UK laws clearly state that it applies to all websites that serve the public, and this approach is being used in other countries.

b) What can we learn about the need for regulating new technologies, and the options for doing so, from international human rights law and the experiences of other countries?

The UK is in the process of establishing a new Centre for Data Ethics and Innovation. The idea of an Australian organisation to lead responsible innovation in one or more areas of new technology will be explored in a White Paper co-authored by the Australian Human Rights Commission and the World Economic Forum, due for release by early 2019.

The results of the Australian National Transition Strategy are questionable in that they allowed for self-reporting which is not reliable. My thesis looking at the success of the NTS showed proof that this method was not reliable and that the results of my audits showed a vastly different result.

I believe we should be requiring that material be tested by independent third party and stipulate rules regarding certification claims.

I believe we should require digital developers to meet certain requirements as this is an unregulated industry with no mandatory professional standards.

c) What principles should guide regulation in this area?

Ethical values, protecting privacy, allow access to all while continuing to be innovative.

All digital material should be accessible for people with disabilities and it should be optional to display a certification. However if certification is provided, it should be substantiated by independent third-party testing.

4. In addition to legislation, how should the Australian Government, the private sector and others protect and promote human rights in the development of new technology?

Bring it to the communities. Make it 'accessible' and easy to understand. Legal jargon does not always make sense to the laymen and that can be doubly true for someone who has cognitive disabilities.

It should be clearly stated in the law that PWD have an equal right to access information, including digital information and services. Until that happens, organisations will still be of the opinion that this is optional.

Developers should be subject to some kind of monitoring or certification for products that serve the public. There should be some kind of professional affiliation required.

5. How well are human rights protected and promoted in AI-informed decision making? In particular, what are some practical examples of how AI-informed decision making can protect or threaten human rights?

AI could potentially be programmed with discriminatory bias.

I believe that PWD are unfairly discriminated against in AI decision-making as evidenced by the low employment and under-employment rate among this group.

I believe that children in schools that are using new technology such as VR and AR experience discrimination in that they are denied enriched experiences. For instance if the class is using VR to walk through the Egyptian pyramids, what equivalent experience do the children with disabilities receive?

6. How should Australian law protect human rights in respect of AI-informed decision making? In particular:

   a) What should be the overarching objectives of regulation in this area?

New tech should improve the lives of people not hinder or put obstacles in front of them.

The objective of AI decision making is that it isn't used unless all groups receive an equivalent handling. PWD should not be subject to algorithms which exclude them based on their differing abilities.

   b) What principles should be applied to achieve these objectives?

Equal access to information and services including digital.

   c) Are there any gaps in how Australian law deals with this area? If so, what are they?

At present I'm not aware if organisations such as Booking.com, Seek.com, Real Estate services, and travel services are treated under law when their services are not accessible to PWD, but if as I suspect this isn't well-covered, it should be fixed.

   d) What can we learn from how other countries are seeking to protect human rights in this area?

We should look at how other countries are changing their laws to reflect equal access to information, products and services, and then amend our laws to reflect best practice.

7. In addition to legislation, how should Australia protect human rights in AI-informed decision making? What role, if any, is there for:

   a) An organisation that takes a central role in promoting responsible innovation in AI-informed decision making?

This should be jointly with governments, too many companies side-tracked by dollars

b) Self-regulatory or co-regulatory approaches?

I don't believe self-regulation works at all, and it doesn't engender consumer confidence.

The approach should absolutely be co-regulatory. Who will check up on companies, where is the accountability? We see this all the time in a11y, laws but no enforcing body.

c) A 'regulation by design' approach?

I believe this to be too vague and something more concrete is required.

8. What opportunities and challenges currently exist for people with disability accessing technology?

Cost, ease of access, not everyone knows where to go to get resources on assistive technology. Many people without disabilities unless working in the sector have no understanding of AT or how they work. Lower bandwidth, Easy English etc. are not applied from government POV and so not always understood.

PWD constantly have difficulty with accessing technology including websites, mobile devices as well as assistive technology. Services such as compulsory e-government services are not designed to accommodate PWD. For instance, voting puts PWD at a disadvantage, as does lodging income tax returns

9. What should be the Australian Government's strategy in promoting accessible technology for people with disability? In particular:

a) What, if any, changes to Australian law are needed to ensure new technology is accessible?

A lack of accountability here in Australia. Kuwait framework is a good tool for this, getting in professionals, user testing etc.

All technology and services should be assessed and certified as being accessible and bear some kind of tick of approval. No government organisation should be able to contract to a service that does not meet accessibility requirements. An example is the software used by local government for their sports & recreation facilities to make bookings. The most commonly used software is completely inaccessible for PWD and there are no good alternatives. That means PWD cannot book for example, their child into a crèche so they can exercise.

b) What, if any, policy and other changes are needed in Australia to promote accessibility for new technology?

All new offerings need to be tested and certified by an independent third-party. All developers should be required to have their digital developments certified and given advice of changes required.

10. How can the private sector be encouraged or incentivised to develop and use accessible and inclusive technology, for example, through the use of universal design?

While inclusive design considers from the very beginning how something might be easily useful and enjoyable for as many individuals as possible, accessibility means making special considerations for people with disabilities. Both approaches are important but while people with disabilities are generally included in the scope of inclusive design, accessibility gives a specific focus on people with disabilities so that the needs of people with disabilities are not diluted or overshadowed in the broader scope of inclusion. Inclusive design is an attractive tool but it is not accessibility and the importance of accessibility cannot be understated.

Universal Design is a good principle, but it does not necessarily mean 'accessible'. Accessibility requires compliance testing according to strongly developed standards, such as WCAG 2.1, while Usability or Universal Design does not specifically support the needs of people with disabilities. E.g. elevator analogy – accessible = usable by people with disabilities, usable = works well for most people.

One of the problems seems to be lack of knowledge, lack of accountability, and rewarding poor design. Current website awards do not test entrants for accessibility well and it often happens that an inaccessible website is given a national award when it is not meeting legal standards.

Developers should have the opportunity to learn about accessible and inclusive technology and have their skills certified – perhaps ACS might look at a specialist designation for accessibility.

We should require that digital developers meet minimum guidelines for all products which offer services to the public, whether government or private.

All levels of government (not just federal) should be required to use the AS EN 301549 which is for the Procurement of Accessible ICT Products and Services. EN 301549 has now been updated to the new version of WCAG 2.1, but all Australian references are at 2.0 – this needs to get changed. Accessibility by way of this Australian Standard should be in all tenders for ICT products and services so that the onus is placed on the developer to create accessible products. This should also be tested to ensure the developer has delivered what is required.

Some quotes from Sir Tim Berners Lee, Founder of the Web, Director of W3C

The world's urban poor and the illiterate are going to be increasingly disadvantaged and are in danger of being left behind. The web has added a new dimension to the gap between the first world and the developing world. We have to start talking about a human right to connect.
Read more at: https://www.brainyquote.com/quotes/tim_bernerslee_444490

Customers need to be given control of their own data-not being tied into a certain manufacturer so that when there are problems they are always obliged to go back to them
Read more at: https://www.brainyquote.com/quotes/tim_bernerslee_373114

My own personal preference is that the consumer, the individual person should be protected because individual people and the difference between individual people and the diversity we have between people on the planet is so important.
Read more at: https://www.brainyquote.com/quotes/tim_bernerslee_444492

"The power of the Web is in its universality. Access by everyone regardless of disability is an essential aspect."