Submission : Human Rights and Technology Consultation
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This consultation is timely, as the rates of visible conflicts between technology and its community impacts, engagement and understanding have all recently risen sharply, continues to rise, and will go on accelerating.

The ability of the political process (and the legal frameworks that follow) to address even the current, comparatively leisurely rates of rising impact, have been shown to be inadequate.

Unfortunately, this collection of developments has coincided with declining levels of public trust in politics, politicians and corporate organisations and visibly inadequate levels of understanding of the implications of science and technology in Parliaments and many branches of the civil service supporting government. Indeed, it has become arguable that the levels of skill internally are inadequate to deliver informed judgements on complex ITC issues, largely outsourced to a small range of large consultants, inherently conflicted in their treatment of major issues where they are paid by both sides of many issues. As we have seen the Chinese walls in finance argued by the financial industries as adequate and trustworthy have essentially broken down.

The detailed impacts on Human Rights will no doubt be the focus of most of the submissions, as that is what was requested. There is little or no room for doubt that the impacts are already substantial and that their severity and scope will increase.

I will therefore address the contexts and the adequacy or otherwise of the present organisational and legal frameworks as these questions will require deeper consideration, and further work by the Commission to bring into focus for the political processes to be able (however unwillingly) to handle. My other resonses and concerns are folded into other formal organisational submissions.

The Consultation report makes it quite clear that refinement of the appropriate questions and issues to pursue is a (if not the) primary goal of the current consultation.

The first to begin to reach the wider public has been the balance between privacy and surveillance.

The first stage has been the progressive rise to near-total barriers to addressing the Human Rights of refugees. At first sight this might not seem to be a technology issue, but the steady rises in restrictions, delays, costs and censorship within FoI administration, and in communications and disclosure have already been materially assisted by technology developments. This will continue with unresisted political pressures to undermine encryption in communications, to censor by content and metadata, and to apply ever increasing pressures to advocates and protestors. These are already in place and negative events are occurring as a result. These will become more severe as technology advances.

Indeed, the most recent steps have been to clamp down on all channels of advocacy and publicity, even to the extent of prosecuting parties operating under government direction[1].

The pervasiveness of communications- and in particular its control- forms a basic foundation for Human Rights abuses as has been true from time immemorial. The combination of technology, personal data aggregation, and communications controls have underpinned authoritarian regimes from early last Century.

The difference is that the space for contestability has been systematically destroyed, often under the post-feudal Westphalian concept of the Nation State as being essentially underpinned by the primary goals of national security and the control of borders.

National Security has become a convenient Trojan Horse to undermine Human Rights, and control of borders has been extended to the cybersphere. Not since Gutenberg has there been anything as dangerous to authoritarianism as the internet, and it has become a primary focus both of warfare and of the systematic deletion or avoidance of the many human rights endorsed by most nations – including Australia.

While debates have concentrated on privacy, the abuses of power made possible by the combination of databases and communications have been a primary cause.

#CentreLinkFail is an excellent example of this, as many of the Human Rights issues, and governance principles that we live under, have been put under considerable strain. While most public concerns have been expressed in terms of the evils of AI or rather of automated decision processes (and their clear failures in design-or were they failures? Many now are beginning to wonder if they were not actually intentional in the design)

#MyHealthRecord is another example of asymmetric power exertion, this time the issues are manifold:

-moving from opt-in to opt out has massive implications for the subject's human rights- and indeed of the GPs and the other medical parties. This has gained some public exposure

-the undisclosed linkages (API) to the Garvan Institute's genetic databases makes it clear that any single person can and will create issues for many hundreds of unknowing relatives

-the effective creation of a non-repudiable biometric accessible to 900,000 people is the direct result of the inclusion of this API. The baby samples taken routinely for many years now mean that this has already wide and undiscussed ethical and human rights implications

These are only three of the ethical issues raised by the poor design and worse governance of the ADHA.

[1] Timor Leste surveillance

This brief submission can only highlight a small selection of such salient recent examples in the short space available, but these are probably sufficient to demonstrate that Governance has now become a crucial component in Human Rights administration.

The examples used show two different types of Rights governance failure:

- Type 1: Centrelink errors -which are reversible
- Type 2: Myhealthrecord databases design, inclusions, access and holding errors – which are **not**

Type 1 emphasises that contestability in automated and technology mediated processes is now critical to correct the abuses of power implied by handing off negative decisions to a decision rule program. The positive aspect is that firm advocacy can correct them. The negative aspect is that any such actions demand higher levels of transparency, which are increasingly resisted by government administrations.

Type 2 demonstrates that current levels and scope of contestability processes and Human Rights based ex-post interventions may not (in fact cannot currently) be enough.

There will be many more examples of Type 1, for which transparency and more open design and technology accountability may yet be developed enough to suffice.

But for the rapidly increasing range of Type 2 technologies there is no genuine backstop of contestability: certainly for individuals.

Anticipating this, a Bill of Rights is already essential. This is ineluctably a Human Rights issue.

While this might seem idealistic, Australia is the sole Five Eyes Country without such a final contestability backup for individuals.

This question demands early attention in the public and government interest, made considerably more visible and urgent by the Human Rights and Technology issues raised in the Commission consultation paper