



Submission to the Australian Human Rights Commission: Human Rights and Technology Issues Paper

October 2018

[Contents](#)

CONTENTS	2
OVERVIEW	3
INTRODUCTION	3
OVERVIEW	3
TECHNOLOGY AND HUMAN RIGHTS	4
ACCESSIBILITY	4
TECHNOLOGY	5
HUMAN RIGHTS	6
DIFFERING ACCESS TO AND EXPERIENCES OF TECHNOLOGY	8
PROTECTING HUMAN RIGHTS.....	9
BEYOND LEGISLATION.....	10
ACCESSIBLE TECHNOLOGY FOR PEOPLE WITH DISABILITY	10
FURTHER INFORMATION AND CONTACTS.....	11

Overview

Introduction

The National Association of Community Legal Centres (NACLC) provides this submission to the Australian Human Rights Commission in response to the Human Rights and Technology Issues Paper 2018 as part of the Commissions' broader Human Rights and Technology Project. We welcome the opportunity to contribute to this important project through this submission and engagement in consultations with the Commission.

NACLC is the national peak body for the community legal sector in Australia. Our members are the eight State and Territory Community Legal Centre Associations. There are 181 community legal centres across Australia which provide free legal help to hundreds of thousands of everyday people as well as people experiencing discrimination and every year. Community legal centres are imbedded in local communities, working in a holistic, client-centred and multidisciplinary way. Centres play a crucial and effective role in assisting people to resolve their legal problems at an early stage, and in meeting rising demand for legal assistance as well as contributing to systemic reform.

This submission seeks to respond briefly to a number of the questions in the Issues Paper and in doing so, groups a number of questions together. We note that a number of individual community legal centres have made more detailed submissions to the Inquiry.

Overview

The people and communities that community legal centres across Australia work with everyday are amongst the people most likely to benefit from the introduction of new technology, but also most likely to have their rights infringed by that same technology without appropriate design and regulation.

Access to technology is increasingly central to access to essential services, including many government services. However, given existing inequalities are often perpetuated or exacerbated through access to technology, there is a need to ensure that the development, implementation and regulation of new technologies is appropriate, accessible, human-centred and operates within a human rights-based framework.

There are a range of types of technology that potentially raise human rights concerns, including for example:

- Internet and social media platforms
- New computing technologies
- Artificial Intelligence (and in particular AI-informed decision-making)

The key human rights upon which technology may infringe include:

- Right to equality and non-discrimination
- Freedom of expression
- Right to privacy

- Freedom from violence
- Accessibility
- Right to benefit from scientific progress
- Right to a fair trial and procedural fairness

Technology and Human Rights

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

The people and communities that community legal centres across Australia work with everyday are amongst the people most likely to benefit from the introduction of new technology, but also most likely to have their rights infringed by that same technology without ensuring accessibility, as well as appropriate design approaches and safeguards.

Accessibility

At the outset it is important to note that access to technology, rather than any particular technology, remains one of the key challenges for many of the people and communities that our centres work with across Australia. It is not possible or appropriate to generalise about use or access to technology. However, we observe that barriers to access experienced by many of our clients arise as a result of a combination of factors including cost; geographical isolation and lack of services in rural, regional and remote areas; low levels of education and/or literacy; language; disability; and experience of family violence (including control over or through technology).

Given existing inequalities are often perpetuated and exacerbated through access to technology and access to technology is increasingly central to engagement with essential services and opportunities, there is a need to ensure that the development, implementation and regulation of new technologies is appropriate, accessible, human-centred and operates within a human rights-based framework.

This is of particular concern when increasingly essential services, including those provided by governments, require access to technology.

For example, a concerning ‘technology only’ approach resulting in the exclusion of people from accessing their legal rights with respect to divorce. The Family Court now requires divorces to be filed electronically through the Commonwealth Courts Portal. Setting up a Portal account requires an email address. A number of centres operate divorce clinics, including to assist non-English speaking clients to use this Portal, which often involves helping the person to set up their first email account. While we understand that the Court has advised it is still possible to file a paper form, the paper form does not appear to be available on the Court website instead requiring engagement by live chat or email.

Technology

In addition to the broader point about accessibility of all types of technology, we focus briefly on three types of technology/issues in more detail: Artificial Intelligence (and in particular AI-informed decision-making); facial recognition and data.

AI-informed decision-making

AI-informed decision-making perhaps raises the most significant and widespread potential human rights concerns. These include the entrenched bias in data used by AI in the design phase, lack of transparency about the data used in AI, and limits on the ability to review decision. As a result, we consider that there is a need for greater transparency about decisions made using AI to ensure adequate monitoring, oversight and review of the design and implementation of AI in decision-making in Australia. We also support policy decisions to ensure that even where AI is used in assisting human decision-making, it should not be used in making any final or determinative decision.¹

Many community legal centres assist people with civil and administrative law matters.² As a result, the potential impact of automated administrative decision-making is of serious concern to the sector. A key recent example of ways in which this type of decision-making may adversely affect the rights of our clients (and one which resulted in many people seeking assistance from community legal centres) is the Centrelink Robodebt program. The program used computerised decision-making in the context of administrative decisions, in particular it used an online compliance intervention system to raise and recover debts based on matching Centrelink and Australian Tax Office data.³ An investigation by the Commonwealth Ombudsman has since revealed a range of concerns, including provision of unclear and limited information about the program or review options, and limited provision for engagement with particularly vulnerable people.⁴

Facial recognition

Another type of technology which is of concern to the sector includes the retention, use and sharing of facial images and other biometric data. There are many existing and potential uses for facial recognition technology, including current use of 'SmartGates' at Australian airports.

However, as the Human Rights Law Centre (a CLC) has noted: 'facial recognition technologies are meaningfully different from tools that law enforcement and intelligence agencies have previously had at their grasp. Unlike other tools which track technology such as mobile phones or cars, face recognition

¹ For example, the 'golden rule' policy adopted by the Department of Home Affairs.

² For a useful review of technology-assisted decision-making in administrative law see: Katie Miller, <http://www.austlii.edu.au/au/journals/AIAdminLawF/2016/26.pdf>

³ See, eg, Commonwealth Ombudsman, 'Centrelink Automated Debt Raising and Recovery System: A report about the department of human services' online compliance intervention system for debt raising and recovery' April 2017 https://www.ombudsman.gov.au/_data/assets/pdf_file/0022/43528/Report-Centrelinks-automated-debt-raising-and-recovery-system-April-2017.pdf.

⁴ Ibid, 2

tracks a person's body. A person's face is an enduring biometric indicator, for most people, it lasts a lifetime and is almost always on display'.⁵

As a result, there is a need for particular caution in enabling and regulating the use of such technology. For further articulation of this, the submission made by a number of centres which expressed significant concern to the recent Committee Inquiry on the Identity-Matching Services Bill 2018 (the Bill) and the Australian Passports Amendment (Identity-matching Services) Bill 2018 may be of use to the Commission.⁶

Data

Finally, the increasing collection of personal data (often without the knowledge of the individual) through the internet, social media and apps which use AI technology; increasing Government collection of data (through mandatory data retention); and the permanence of information and data means that considering the collection, storage, use and ownership/sovereignty over data should be part of this Project. This should include consideration of, for example:

- protection against retrospective changes to the reasons or ways in which data collected may be used (for example, health data collected and later used for insurance purposes)
- weighing the interests of the consumers and the interests of the creators of online platforms. Personal data should not be collected merely to advance such online platforms if it amounts to a serious breach of one's right to privacy.

Human Rights

The key human rights upon which technology may infringe include:

- Accessibility (noted earlier in this submission)
- Right to equality and non-discrimination
- Freedom of expression
- Right to privacy
- Freedom from violence
- Right to benefit from scientific progress
- Right to a fair trial and procedural fairness

We include a number of brief examples below:

⁵ See, eg, Human Rights Law Centre, <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5b0cebb66d2a73781c59100f/1527574029901/Human+Rights+Law+Centre+Submission+to+PJCS+-+Identity-Matching+Services.pdf>

⁶ See, eg, Human Rights Law Centre, <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5b0cebb66d2a73781c59100f/1527574029901/Human+Rights+Law+Centre+Submission+to+PJCS+-+Identity-Matching+Services.pdf>

Freedom from violence

Many of our centres, in particular Women's Legal Services, report the use of technology by perpetrators of family violence including to:

- make threats by email or on social media platforms
- bugging/tracking of personal mobile devices
- use of recording devices
- sharing of personal information and images using technology, and
- reminding victims of family violence of their trauma by posting comments on social media platforms, sending text messages and leaving voicemail messages.⁷

Right to benefit from scientific progress

Increasingly essential services are delivered online by all levels of Government. While in many respects this should be welcomed, it presents a range of challenges for the people we work with, including for example difficulties:

- accessing the internet due to cost, location or capacity
- accessing information that is easily understood and in a language that they speak, and
- seeking assistance in relation to the provision or denial of services

In light of the right to benefit from scientific progress, we consider it is appropriate for governments to either bear responsibility for ensuring connectivity, or ensure and facilitate provision of and access to services in appropriate and alternative ways.

Right to a fair trial and procedural fairness

As highlighted in the Issues Paper, the right to a fair trial and procedural fairness is threatened by the recent employment of AI technology in the criminal justice system.

By way of example, the sector has expressed serious concerns about the NSW Police Suspect Targeting Management Plan (PLAN) policy,⁸ which while not currently using AI-informed decision making, does use a range of 'criteria', and provides a key example of ways in which this type of decision-making might undermine key human rights.

⁷ See, for example, Women's Legal Service NSW which has worked with the Domestic Violence Resource Centre and WESNET on a national project to develop Australia-specific and Australia-wide resources to assist victims of technology-assisted domestic violence and those who are trying to assist them: <http://www.wlsnsw.org.au/law-reform/tech-stalking-abuse/>

⁸ See, for example: Vicki Sentas and Camilla Pandolfini, Policing Young People in NSW: A study of the Suspect Targeting Management Plan, Youth Justice Coalition, October 2017, <https://www.piac.asn.au/wpcontent/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

Differing Access to and Experiences of Technology

Question 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?

Centres across Australia assist a wide range of people. For example, in 2017-2018, the profile of clients assisted nationally (noting the conservative nature of these numbers) was:

- People experiencing financial disadvantage (83.28%)
- People experiencing family violence (25.14%)
- People from culturally and linguistically diverse backgrounds and communities (23.18%)
- People with disability (22.40%)
- Children and young people (14.76%)

We are conscious of not wanting to make generalisations about the experiences of technology for these groups. However, some of the key issues relating to new technologies for our clients include:

- high cost of access to internet and/or particular technology for people experiencing financial disadvantage
- geographical isolation and limited access to services, particularly in rural, regional and remote communities
- lack of reliable access to technology, for example as a result of experiencing homelessness (while many people experiencing homelessness do have a mobile phone, many do not have reliable connectivity)
- exposure to online harassment, abuse and discrimination
- limited capacity and/or access to training and capacity building in use of technology
- limited capacity to access essential services online, such as banking or engagement with Centrelink
- culturally inappropriate collection, storage or use of data or use of technology and the need for Aboriginal and Torres Strait Islander people, organisations and communities to control their data and knowledge
- power, control and coercion over or through technology (for example, many of our centres assist clients experiencing family violence who have experienced abuse through technology, as noted earlier in the submission), and
- difficulty accessing information, materials or technology in languages other than English.

Protecting Human Rights

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

We confine our response to this question to highlighting some of the key gaps in existing Australian law and an overview of some of the principles that should guide regulation in this area.

There are significant gaps in existing Australian law with respect to the protection and promotion of human rights generally, as well as with respect to technology.

In particular, we suggest the absence of a comprehensive national human rights framework is a key barrier to ensuring the appropriate legislative context for the protection and promotion of human rights as well as technological development. As a result, we strongly suggest that a key way in which Australia can protect human rights in the development, use and application of new technologies is through:

- enacting a establishing a comprehensive national Human Rights Act
- reviewing and strengthening complementary human rights processes and forums such as the Joint Parliamentary Committee on Human Rights and Statements of Compatibility

In addition, other areas in which there are gaps in existing law include:

- **Privacy law-** existing laws are inadequate in response to the rising risk of invasions of privacy through new and emerging technologies. For example, there remain lack of an established right to privacy or legal remedies for breach of privacy despite important recommendations made by the Australian Law Reform Commission with respect to the strengthening of privacy protections and the need for flexible laws that can adapt to evolving technology.⁹
- **Freedom of Information law-** to ensure that decisions made using technology-assisted decision-making is not exempt from FOI laws given the potential use of exemptions

As outlined above and articulated in the Issues Paper, we support a human rights-based approach to regulation on this area. In addition to this broad principle, other principles which should guide regulation in this area include:

- Transparency and accountability
- Accessibility and participation
- Fairness and non-discrimination
- Flexibility (to evolve over time and differ depending on the type of technology)
- Consistency (in particular, consistency across jurisdictions to ensure a uniform approach to the regulation of these issues)

⁹ See: Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, ALRC Report 123 (2014).

- Review (to measure the success or failures of regulation)

Beyond Legislation

Question 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?

There is a vital role for broader regulatory approaches to ensure the protection and promotion of human rights in the development of new technology. Briefly:

- The Australian Government should protect and promote human rights in the development of new technology by ensuring the appropriate legislative and regulatory framework is in place to encourage and require compliance with human rights in the development of new technology.
- It is vital that the private sector is obliged to protect and promote human rights in the development of new technology and that there are appropriate regulatory mechanisms in place to identify where this does not occur. For example, this could involve requiring businesses to periodically report on or identify measures implemented to ensure such compliance.
- As a non-government organisation, we also acknowledge the vital role NGOs and community organisations can play in protecting and promoting human rights in the development of new technology, including by:
 - undertaking user-centred design in designing our own technological products and initiatives
 - supporting and empowering our clients and communities to engage with those developing and using technology
 - holding government and the private sector to account
 - raising awareness about human rights concerns and the need for policy to govern the area of human rights and technology through advocacy work

Finally, we note that in order to encourage innovation and technological development by NGOs that are in many ways to ensure inclusive and user-centred design, there is a need for increased investment in and support of the sector. This could include additional funding, but also through provision of common platforms and open source software, to assist in creating environments in which such technology may be developed.

Accessible Technology for People with Disability

Access to technology can offer significant opportunities for people with disability and facilitate enjoyment of human rights. It can improve and enhance engagement in political and public life; social inclusion; quality of life; access to education and training; inclusive workplaces; and greater participation in cultural and sporting activities.

However, there are also significant barriers and challenges experienced by people with disability in accessing technology. These include for example: failure to incorporate accessibility into design; cost of technology; failure to support technologies with accessibility features with appropriate training or clear information about use.

As a result, it is vital that in introducing new technology there is appropriate consideration of the ways in which people with disability might access and use the technology to ensure that its introduction does not create barriers to access (including for goods and services that might previously have been easily accessible).

One of the key issues in ensuring accessible technology is the need to ensure universal design and appropriate user-testing in the early and design stages. This is particularly important given the current complaints based nature of anti-discrimination law in Australia.

For example, while the *Disability Discrimination Act 1992* (Cth) makes it unlawful to develop and release inaccessible technology, in cases where an individual makes a complaint about a piece of technology it might be that integrating accessibility after the fact is considered an unjustifiable hardship given the research, development and cost associated with much technology. One way of addressing this issue may be for the Commission to consider ways to provide more detailed information or commentary in relation to how to meet obligations under the DDA in the design and distribution of new technology.

[Further Information and Contacts](#)

We would welcome the opportunity to provide any further information or examples if it would assist the Commission. The appropriate contact person to discuss the submission is [REDACTED]

[REDACTED]