

HUMAN RIGHTS AND TECHNOLOGY PROJECT DISCUSSION PAPER

SUBMISSION FORM

SUMMARY ONLY here: Full paper to the Commission

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This is a summary of broader response to the details of the Discussion Paper. I commend the commission and, for my part, support the proposals advanced in the Discussion Paper.

In particular, I believe that the government needs to reconcile the position advanced in the government's [CSIRO/Data 61 'Ethical AI' process](#) (April 2019) with the regulatory responsibilities of government. Chapter 3 of the AHRC Paper calls for filling regulatory gaps, yet the CSIRO/Data 61 process adopted an after-the-fact approach to harm. That outcome stated:

"The framework may need to be supplemented with regulations, depending on the risks for different AI applications. New regulations should only be implemented if there are clear regulatory gaps and a failure of the market to address those gaps."

This approach (addressing gaps only once the market has been shown to have failed to self-regulate) is manifestly not an acceptable approach in terms of Australia's commitment to human rights.¹ The AHRC outcome paper from this present discussion should explicitly engage with this apparent prevailing approach, being the most recent official posture adopted by the government in relation to the governance of new technologies (there AI). The key concept of 'net benefit' in that government document is blunt and under-developed and the AHRC process should engage explicitly with it, if it is to shape government regulatory design in relation to new technologies.

The AHRC's proposals for various strategies or processes are sound ones. However, they need to do more than engage with expertise in government, industry, academia and civil society. While the AHRC is just one institution, the design of the various bodies or processes it recommends needs to be premised not just on 'getting things right' among experts. These forums need to attempt to promote a more inclusive national conversation about the values and purpose of technology in assisting in human flourishing, and about approaches to the governance here (and globally, where Australia can influence that) of responsible, safe and beneficial new technologies. Greater public engagement on the profound societal issues at the nexus of 'human rights' and 'new technology' (and 'power'!) will enhance our human rights culture in this regard in ways that expert bodies alone, however good their analysis and recommendations, cannot. To some extent **Proposal 16** relates to this, but here I am not talking about education activities by the AHRC. I am talking of the role of the other bodies that it proposes, such as the National Commissioner. The AHRC ought to push that these sorts of bodies explicitly be part of a deliberate wider national conversation about what kind of society we want, and how technology enables or threatens that.

The AHRC ought also to consider how, in its final outcome document and in moving forward, it can make statements, within its mandate, in relation to the design and operationalisation of Australian foreign policy when it comes to the nexus of 'new technology' and 'human rights' in countries in our region, especially those with less resilient human rights governance.

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¹ <http://privatesector-publicworld.blogspot.com/2019/11/responsible-ai-governing-market-failure.html>