



A Digital Rights Commissioner

An independent advocate for your rights online

The Digital Rights Commissioner, working within the Australian Human Rights Commission, will work to scrutinise legislation, and will advise governments, departments and the general public on the effect of proposals, programs and legislation, focusing on safety, accessibility, privacy and security for all Australians.

A 2011 report from the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression¹ called upon all states to maintain access to the internet at all times, and that inhibiting access to the internet constitutes a human rights violation.

This is because it is becoming almost impossible in modern society for an individual to engage with the world if that person can't access the internet.

Spain, France and Finland are among a growing number of nations that have already enshrined this access² via constitutional amendment or statute, or through judicial rulings. Upon taking office, the new Prime Minister of Canada - Australia's 'Five Eyes'³ ally - was informed that, 'defending and advancing a free, open and secure cyberspace is essential to Canada's commitment to human rights and democracy' in a briefing note⁴.

More and more Australians use the internet to conduct their everyday lives; for shopping, banking, to socialise, to plan their travel, to learn. Invisible to many is the way our rights online are being eroded, as successive governments have given law enforcement, intelligence agencies and a wide range of other Government departments extraordinary powers of warrantless surveillance and data collection.

The Greens now propose a new Human Rights Commissioner, to scrutinise government legislation, policy, proposals and procedures, and to advise governments, private sector organisations and individuals on the impacts on the privacy, safety, security and accessibility of the internet for Australians.

> DIGITAL RIGHTS UNDER THREAT

Mandatory data retention

Unwilling Australian Internet Service Providers are now required by law to retain two years' worth of private location and personal contact data on every one of their users, which a wide range of government agencies can access at any time, with no judicial oversight.

The Greens fought to prevent the introduction of this mandatory data retention legislation, but were defeated by combined vote of Labor, Liberal and National.

Encryption

Technically illiterate pronouncements from Liberal MPs about encryption have ignored the role encryption plays in keeping personal details secure. Millions of Australians rely on encryption for their banking and for secure communications. Undermining the protocols that enable these transactions would put the security of the transactions themselves at great risk, exposing countless people to theft and fraud, and making privacy effectively impossible. In February 2016 a Greens Senate motion recognising the importance of strong encryption was voted down by the combined numbers of Liberal, Labor and Nationals, leaving little room for complacency in the event of a change of Government.

Internet filtering

The Greens led the political charge against Labor's ill-fated mandatory internet filter, which was defeated at the 2010 election. Since then however, the Liberal, National and Labor parties have collaborated to introduce two distinct schemes for removing access to web pages; one for material alleged to infringe copyright, and one poorly regulated 'takedown' scheme under s313 of the Telecommunications Act. The scope for future Governments to expand the reach of either of these schemes is wide open.

Mass Surveillance

For as long as Australia is a member of the secret Five Eyes agreement, we will be complicit in the indiscriminate collection of billions of private communications, accessible without a warrant to an unknown number of domestic and foreign agencies.

> TURNING THE TIDE ON DIGITAL RIGHTS

Debates about digital rights in Australia have mostly been reactive; to the Snowden disclosures, the mandatory data retention scheme, or the internet filter. Those discussions have often centred on the false choice between individual privacy or national security.

A Digital Rights Commissioner working out of the Australian Human Rights Commission will serve both as an advocate in response to existing law, and proactively as new law is proposed. The Commissioner will ensure that concerns about safety, accessibility, privacy and security are addressed as legislation is being developed, not half-heartedly considered after legislation is introduced.

The Commissioner will work with the Office of the Information Commissioner and the Privacy Commissioner, but without the statutory limitations the Privacy Commissioner⁵ faces. Australia's Privacy Act, which determines the scope of the Privacy Commissioner's work, has not kept pace with technological change. Even if it were comprehensively updated, it is unlikely that the Privacy Act, and the role of the Privacy Commissioner, could be expanded to include pre-emptive advice in the manner of the Australian Human Rights Commission (AHRC)⁶, given those legislated responsibilities.

The Commissioner will ensure that human rights held by people offline are protected online, in accordance with a unanimous 2013 UN General Assembly resolution⁷, which recognised the need for special measures for all states to review their obligations in light of rapid technological change and to establish or maintain oversight and accountability of all State surveillance of communications, their interception and the collection of personal data.

The Digital Rights Commissioner will fit well into the existing framework of the AHRC, and provide the same output as the existing human rights commissioners, focusing on the digital space:

Our Mission – as described by the AHRC:

Leading the promotion and protection of human rights in Australia by:

- making human rights values part of everyday life and language;
- empowering all people to understand and exercise their human rights;
- working with individuals, community, business and government to inspire action;
- keeping government accountable to national and international human rights standards;

We do this by:

- listening, learning, communicating and educating;
- being open, expert, committed and impartial;
- fostering a collaborative, diverse, flexible, respectful and innovative workplace.

Our statutory responsibilities include:

- education and public awareness
- discrimination and human rights complaints
- human rights compliance
- policy and legislative development.

We do this through:

- resolving complaints of discrimination or breaches of human rights under federal laws
- holding public inquiries into human rights issues of national importance
- developing human rights education programs and resources for schools, workplaces and the community
- providing independent legal advice to assist courts in cases that involve human rights principles
- providing advice and submissions to parliaments and governments to develop laws, policies and programs
- undertaking and coordinating research into human rights and discrimination issues.

> BUDGET IMPLICATIONS

The Parliamentary Budget Office has costed the Greens plan for a Digital Rights Commissioner at \$1.3 million over the forward estimates. The Digital Rights Commissioner will be an additional Commissioner, and will not replace existing Commissioners or capacity.

> INACTION FROM OTHER PARTIES

During the worst years of the Abbott Government, the Labor Party was exposed as deeply complicit in the erosion of digital rights, submitting to successive waves of flawed legislation while maintaining the pretence of providing a check and balance through the compliant 'Joint Standing Committee on Intelligence and Security'. It was left to the Australian Greens and a handful of crossbenchers to provide the voice of opposition.

¹http://www2.ohchr.org/english/bodies/hrcouncil/docs/17sesson/A.HRC.17.27_en.pdf

² <http://www.diplomacy.edu/blog/right-access-internet-countries-and-laws-proclaim-it>

³ <https://www.privacyinternational.org/node/51>

⁴ <https://www.thestar.com/news/canada/2016/01/15/justin-trudeaus-advisers-stress-importance-of-internet-freedom.html>

⁵ <https://www.oaic.gov.au/about-us/>

⁶ <https://www.humanrights.gov.au/about-commission-0>

⁷ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/167&referer=/english/&Lang=E