

# Submission to the Parliamentary Joint Committee on Human Rights

*regarding the*

## Inquiry into Australia's Human Rights Framework

29 June 2023



**DIGITAL  
RIGHTS  
WATCH**



**Electronic  
Frontiers**  
AUSTRALIA

# Overview

Digital Rights Watch (DRW) and Electronic Frontiers Australia (EFA) welcome the opportunity to submit comments to the Parliamentary Joint Committee on Human Rights in regard to the Inquiry into Australia's Human Rights Framework.

As leading digital rights organisations in Australia, we advocate for human rights as realised in the digital age. This includes, but is not limited to, the right to the right to privacy, freedom of speech, expression and association, the right to access information, and the right to protest.

EFA and DRW have actively called for a federal Charter of Human Rights since our respective establishment in 1994 and 2016.<sup>1</sup>

Our digital world must be underpinned by equality, freedom and established human rights principles. Its evolution and future must be guided by the interests of all peoples and the environments we live in. We exist to defend and promote this vision—to ensure fairness, freedoms and fundamental rights for all people who engage in the digital world. Our key areas of focus are information privacy, digital security, online safety, the social impact of emerging technologies, and enhancing democracy online.

**Digital Rights Watch and Electronic Frontiers Australia strongly endorse the creation and enactment of a comprehensive federal Human Rights Act.**

In particular, we support a federal Human Rights Act that is broad in scope and application.

It must recognise and respond to the realities of the technological world that we inhabit, however it ought to be designed to be technology-neutral, in order to remain fit for purpose as the landscape of digital technology and its requisite human rights challenges continue to evolve.

A federal Human Rights Act is essential to help prevent human rights violations, provide a powerful tool to challenge injustice, and foster a rights-based culture that understands and respects human rights across Australia.

Such an Act would mean that government decision-making must factor in human rights at the outset, and crucially, enable people to take action when their rights are breached.

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<sup>1</sup> Read about the work of Electronic Frontiers Australia at [www.efa.org.au](http://www.efa.org.au)  
Read about the work of Digital Rights Watch at [www.digitalrightswatch.org.au](http://www.digitalrightswatch.org.au)

# Digital rights are human rights

Digital rights are often considered as an extension of human rights particularly relevant or applicable in the digital age.

Digital rights generally encompass various aspects of our online lives, including the right to privacy, freedom of expression, speech and association, access to information, and the right to control our own data. Digital rights and freedoms are essential in the digital age, as they ensure that individuals and communities have the necessary safeguards to navigate and participate in the digital world.

As digital technologies become further intertwined with people's everyday lives—across work, access to essential services, and social interaction—digital rights have never been more important in order to ensure fairness and dignity for all people as they participate in modern digital life.

Digital technologies have the potential to codify pre-existing social inequalities, amplify the impacts of human rights abuses, and enable new forms of repression. For instance, governments and other actors are able to misuse technology for surveillance, censorship, the spread of mis- or dis- information, and suppression of political debate and dissent. Protecting and upholding digital rights is crucial to both the protection of people at an individual level, as well as enabling a well-functioning healthy democracy at a societal level.

Some examples of how digital technologies exacerbate inequalities and enable human rights abuses include, but are not limited to:

- Facial recognition technology undermines the right to privacy, threatens freedom of association and assembly, and enables widespread surveillance and tracking of individuals.<sup>2</sup>
- Artificial Intelligence and Automated Decision Making systems can perpetuate bias and discrimination, and in some cases prevent or otherwise negatively impact people's access to essential services including housing, finance, insurance, welfare, and education.<sup>3</sup>
- Censorship, filtering and automated content moderation can provide entities, including governments, with powerful tools to control and manipulate the flow of information. This can restrict access to information,

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<sup>2</sup> For example, ClearviewAI, which scraped millions of images of individuals from social media platforms to use in their biometric system, was found to have breached Australian's right to privacy by the Office of the Australian Information Commissioner. In the United States, facial recognition systems used in policing have resulted in at least three wrongful arrests.

<sup>3</sup> <https://tech.humanrights.gov.au/artificial-intelligence/ai-informed-decision-making>

stifle dissent and limit freedom of expression. It also can lead to the suppression of marginalised voices online, political repression, and the spread of misinformation.

The **right to information privacy** is crucial not only as a fundamental human right, but also as an enabler of other rights, such as **freedom of speech, expression and association**, especially as our social and political interactions are increasingly online.

Associated with the right to privacy are the rights of data subjects, which are enshrined in the EU's General Data Protection Regulation, including the **right to be forgotten, right to erasure, rights of access and correction**, and the **right to object to solely automated processing**.

While the Commonwealth's Attorney-General's Department is currently considering introducing a range of similar rights under the *Privacy Act 1988*, the introduction of a standalone *Human Rights Act* that includes a comprehensive right to privacy would go a long way to ensure privacy is actively considered in the development of Australia's tech future.

In addition, over the past decade the need to consider new rights has also become apparent. For instance, it is no longer reasonable to consider access to the internet as a luxury, but rather an essential service.

A number of countries have recognised a **right to access the internet**, however in order for the right to be realised, issues and challenges regarding digital inclusion and remote network connectivity must be tackled.<sup>4</sup>

Further, in order to enjoy the **right to access information** and to participate in modern life, people ought to be assured that the systems they are using have met digital security standards.

Just as we have a right to privacy, so too there is an increasing need to treat **digital security as a right**.

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<sup>4</sup> <https://humanrights.gov.au/our-work/8-right-access-internet>

# A Charter for Digital Rights

We do note, however, that a Human Rights Act is unlikely to fully encompass the considerations necessary to best protect individuals and communities online and encourage full enjoyment of the opportunities that the digital age brings.

Likewise, in order to ensure the Human Rights Act does not suffer from too many competing specifics, a second Charter dedicated to digital rights and how human rights intersect with digital and tech policy, more oriented towards operationalising human rights in a specific context and design principles, should be developed alongside the Human Rights Act.

The European Union's Declaration on Digital Rights and Principles was designed to complement existing rights, and to provide guidance for the European Union and its member states as they pursue "human centric" and "sustainable" digital transformation.<sup>5</sup>

Noting that Australia is also embarking upon our own digital transformation process—including but not limited to the reinvigoration of myGov and the proposed establishment of a national digital identity through the Trusted Digital Identity Framework—a guiding set of overarching rights and principles would be immensely useful in ensuring Australia's digital transformation projects, and indeed any digital policy or proposed legislation are grounded in human rights, safety and dignity of all Australians.

The European Union Declaration on Digital Rights and Principles is shaped around six themes:

1. Putting people and their rights at the centre of the digital transformation
2. Supporting solidarity and inclusion
3. Ensuring freedom of choice online
4. Fostering participation in the digital public space
5. Increasing safety, security and empowerment of individuals
6. Promoting the sustainability of the digital future

Australia would greatly benefit from the development of our own set of Australian digital rights and principles *in addition to* a federal Human Rights Act.

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<sup>5</sup> <https://digital-strategy.ec.europa.eu/en/policies/digital-principles/>

How precisely a Declaration of Digital Rights and Principles would be designed, implemented and enforced is a significant body of work - but is critical to ensure the major digital transformation work the Australian Government is undertaking is done fairly and in a way that not just protects but enhances the human rights of everyone.

## Recommendations

1. Enact a comprehensive federal Human Rights Act.
2. Develop an Australian equivalent to the European Union's Declaration of Digital Rights and Principles.

We welcome the opportunity to discuss this submission further with members of the Committee over the course of the Inquiry.

## Contact

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