



Australian
Human Rights
Commission

Human Rights Responses to Cybercrime

Submission to the Joint Committee on Law Enforcement

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Joint Committee on Law Enforcement (Committee) as part of its Inquiry into the capability of law enforcement to respond to cybercrime (Inquiry).
2. The role of the Commission is to work towards a world in which human rights are respected, protected and fulfilled. The Commission has expertise on the intersection between technology and human rights.
3. In 2023, the Commission has provided two previous submissions on the intersection between technology, crime and human rights:
 - [Tackling Technology-facilitated Slavery](#): submission to the United Nations Special Rapporteur on Slavery in response to their call for input on the use of technology in facilitating and preventing contemporary forms of slavery.
 - [Strengthening our Response to Slavery](#): submission to the Attorney-General's Department's Targeted Review of Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth). The intersection between technology and criminal justice was directly considered.
4. The Commission encourages the Committee to consider the above two submissions and their recommendations as part of this submission.

2 Technology-facilitated crime

5. Ensuring law enforcement capabilities are sufficiently developed and resourced to allow for the detection, investigation and prosecution of cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, has never been more important.
6. Technology now plays a key role in criminal enterprise as perpetrators utilise technology during as perpetrators utilise technology during all stages of criminal offending and to facilitate a wide range of crimes.¹
7. The intersection between technology and crime means that those responsible for law enforcement must ensure they are flexible and responsive, as wrongdoers shift illicit operations to digital environments.² For example, during the COVID-19 lockdowns online platforms were used at a higher rate to facilitate slavery offences.³

8. Online criminal operations are highly complex but also flexible, being extremely responsive to global events and finding loopholes in policing and regulation across jurisdictions.
9. Technology has not only provided perpetrators with new tools and methods of conducting their enterprises, but also allowed illegal operations to shift elements of criminal operations online.⁴
10. One example of this is the significant role that technology plays in enabling forms of modern slavery. Traffickers and exploiters often use social media to gain trust, gather information, recruit and track victims through surveillance and location data.⁵ This enhances their control over victims, paving the way for various forms of exploitation. Traffickers may use websites, social media, or online classified platforms to advertise victims for sexual services. They often post advertisements and communicate with potential clients through digital channels. This use of technology allows traffickers to reach a broader audience and evade traditional law enforcement methods, making it challenging to combat this form of exploitation.⁶
11. The internet increases the ability to evade both detection and capture, while making profit.⁷ Criminals may operate in multiple jurisdictions simultaneously – so while a single victim may be physically located in one place, their exploitation often extends far beyond that single location.⁸
12. To ensure Australia’s criminal justice system is able to respond to the novel and often changing practices of crime online, there must be greater focus on future-proofing law enforcement.

Recommendation 1: Government resource education and training on cybercrime awareness, including both cyber-dependent crimes and cyber-enabled crimes.

3 Technology-neutral legislation

13. Early adopters of new and emerging technologies often benefit from little governmental scrutiny, policing or organisational restrictions.⁹
14. International laws and regulations inadequately regulate new and emerging technologies as facilitators of crime.¹⁰ Although Australia has a robust

legislative framework to address different crimes, aspects of this regulatory landscape have been challenged by new and emerging technologies.¹¹

15. To ensure that law enforcement is able to best respond to technologies, which often change, foundational legislation must be updated and new legislation should be drafted in technology-neutral terms.
16. Technology-neutral drafting ensures that new technological developments cannot avoid regulation simply because they are innovative. It also reduces the need for constant updates to laws to accommodate technological advancements.

Recommendation 2: Legislation addressing cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, be drafted and updated in technology-neutral terminology.

Expert stakeholders should be consulted in the law reform process to ensure its longevity and application to emerging technologies.

4 Regular reviews

17. Although ensuring technology neutral legislation will reduce the need for constant updates, this does not mean regular reviews should not be conducted.
18. Technology-related legislation and regulatory practices are constantly evolving. For example, the creation of the eSafety Commissioner (then the Children's eSafety Commissioner) in 2015 was a world first.¹² The eSafety Commissioner's mandate was strengthened under the *Online Safety Act 2021* (Cth) which enables eSafety to issue removal notices to take down cyber-abuse material. However, in a 2023 thematic report by the Special Rapporteur on Contemporary Forms of Slavery, it was suggested that Australia needed to again strengthen its response as 'content removal alone is not enough to prevent online abuse'.¹³
19. A technology-neutral approach to regulation does safeguard against new and emerging technologies falling outside of legislative remits. However, this approach is not infallible.

20. To ensure a robust approach to cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, regular consultative reviews should be conducted.
21. By conducting regular reviews authorities can better combat cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, and 'stay ahead' of perpetrators who use technology for criminal purposes. This proactive approach is essential to keeping the legal system aligned with the rapidly changing digital landscape.

Recommendation 3: Establish regular consultative reviews of legislation which interacts with cybercrime, including both cyber-dependent crimes and cyber-enabled crimes.

22. This process should involve ongoing conversations and collaboration with groups such as government agencies, civil society agencies, industry experts and human rights specialists.

5 International operations

23. One of the difficulties in countering cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, is that the illicit operations can take place across jurisdictions. For example, organised criminal groups involved in slavery can operate locally or nationally, but their activities may also span across borders. Exploitation can take place in one country but be broadcast across borders.
24. The International Justice Mission has previously raised concern about the sexual exploitation of children (as young as two months old) in the Philippines. Although the abuse takes place in the Philippines, it is broadcast across countries – with Australians being amongst 'demand-side offenders who commission, direct and pay to have such abuse livestreamed over video chat applications'.¹⁴
25. Even though there are laws prohibiting such content, the cross-jurisdictional nature of such abuse complicates detection, investigation and prosecution. This challenge is exacerbated when one jurisdiction has 'lax' legislation (or legislation which is not adequately enforced) – creating safe havens for illicit activity.

26. For this reason, harmonisation of procedural criminal law across jurisdictions is highly preferable. This would better enable cooperation on aspects of criminal investigations which often differ between states including rules surrounding extradition, mutual legal assistance and criminal asset recovery.¹⁵ It is recognised that such harmonisation is difficult, but not impossible.

Recommendation 4: Harmonisation of legislation governing criminal law procedures, across jurisdictions, to allow for easier cooperation during cross-jurisdictional criminal investigations.

6 Right to privacy

27. The right to privacy is a cornerstone human right¹⁶ – underpinning freedoms of association, thought and expression, as well as freedom from discrimination.¹⁷

28. The *Privacy Act 1988* (Cth) is being modernised as part of the Federal Government’s suite of privacy reforms. The Commission supports reforming the *Privacy Act 1988* (Cth) and provided a [submission](#) focusing on the human right to privacy. Although the government has provided its [response](#) to the Attorney-General’s Department, there is still an urgent need for these reforms to be enacted.

29. Stakeholders are calling on the government to enact the agreed to reforms to the *Privacy Act 1988* (Cth).¹⁸ This comes at a time when several pieces of legislation relying on the *Privacy Act 1988* (Cth) (such as the *Identity Verification Services Bill 2023* and the *Identity Verification Services (Consequential Amendments) Bill 2023* (Cth)) are being considered prior to the *Privacy Act 1988* (Cth) being updated.¹⁹

30. During a period of greater focus on the right to privacy in light of reforms,²⁰ it is essential that a balance be struck. Law enforcement must ensure equilibrium between the need to combat crime while respecting the right to privacy.

7 Recommendations

The Commission makes the following recommendations.

Recommendation 1

Government resource education and training on cybercrime awareness, including both cyber-dependent crimes and cyber-enabled crimes.

Recommendation 2

Legislation addressing cybercrime, including both cyber-dependent crimes and cyber-enabled crimes, be drafted and updated in technology-neutral terminology.

Expert stakeholders should be consulted in the law reform process to ensure its longevity and application to emerging technologies.

Recommendation 3

Establish regular consultative reviews of legislation which interacts with cybercrime, including both cyber-dependent crimes and cyber-enabled crimes.

Recommendation 4

Harmonisation of legislation governing criminal law procedures, across jurisdictions, to allow for easier cooperation during cross-jurisdictional criminal investigations.

Endnotes

- ¹ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2022' (Report, January 2023) 70.
- ² See generally Tomoya Obokata, 'Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences' (UN Doc A/78/161, 12 July 2023).
- ³ Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 'Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (UN Doc A/78/170, 16 July 2021) 8 [20].
- ⁴ Attorney-General's Department, 'Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)' (Report, 11 September 2023) 28-29.
- ⁵ Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 'Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (UN Doc A/78/170, 16 July 2021) 6 [16]; Tomoya Obokata, 'Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences' (UN Doc A/78/161, 12 July 2023) 4-6 [3]-[8].
- ⁶ Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 'Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (UN Doc A/78/170, 16 July 2021) 6 [16].
- ⁷ Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 'Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (UN Doc A/78/170, 16 July 2021) 6 [16].
- ⁸ Tomoya Obokata, 'Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences' (UN Doc A/78/161, 12 July 2023) 17 [43].
- ⁹ Australian Human Rights Commission, 'Tackling Technology-facilitated Modern Slavery at the International Level' Submission to the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences (Submission, 13 April 2023) 5 [15].
- ¹⁰ United Nations Office on Drugs and Crime, 'Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children' (Report, May 2015) 55.
- ¹¹ Attorney-General's Department, 'Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)' (Report, 11 September 2023) 28-30.
- ¹² Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'eSafety Commissioner' (Webpage) <<https://www.infrastructure.gov.au/media-technology-communications/internet/online-safety/esafety-commissioner>>.
- ¹³ Tomoya Obokata, 'Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences' (UN Doc A/78/161, 12 July 2023) 13 [31].
- ¹⁴ International Justice Mission, 'IJM Submission' Submission to the Attorney-General's Department on the Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) (Submission, 2023) 6.
- ¹⁵ Tomoya Obokata, Special Rapporteur, Report on contemporary forms of slavery, including its causes and consequences, UN Doc A/78/161 (12 July 2023) 17 [43].
- ¹⁶ See Universal Declaration of Human Rights art 12; International Covenant on Civil and Political Rights art 17; Convention on the Rights of the Child art 16; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art 14; Convention on the Rights of Persons with Disabilities art 22; African Charter on the Rights and Welfare of the Child art 10; American Convention on Human Rights art 11; Convention for the Protection of Human Rights and Fundamental Freedoms art 8.
- ¹⁷ Australian Human Rights Commission, 'Safeguarding the Right to Privacy' Submission to the Attorney-General's Department on the Privacy Act Review Report (Submission, 05 April 2023) 6 [15].
- ¹⁸ Jarni Blakkarly, 'Why the Federal Government must act Urgently on Privacy Reform', CHOICE (online, 25 October 2023) <<https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/privacy-reform-open-letter>>.

¹⁹ See e.g. *Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023*; see also Department of Industry, Science and Resources, ‘*Supporting Responsible AI: Discussion Paper*’ (Webpage) <<https://consult.industry.gov.au/supporting-responsible-ai>>.

²⁰ See generally Australian Human Rights Commission, ‘*Safeguarding the Right to Privacy*’ Submission to the Attorney-General’s Department on the Privacy Act Review Report (Submission, 05 April 2023).