



MINDINGRIGHTS

<https://www.mindingrights.org>

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To: The Parliamentary Joint Committee on Human Rights
Parliament House
Canberra ACT 2600
Australia

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Dear Secretary

Inquiry into Australia's Human Rights Framework

I am a member of the Minding Rights Network (MRN), an Academic Fellow at Sydney Law School, and Deputy Director of Sydney Institute of Criminology.

Please find attached a submission to the inquiry from the members of the MRN who are listed on the submission.

Yours Faithfully

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Submission to Parliamentary Joint Committee on Human Rights

We are an interdisciplinary and international group of scholars who are members of the Minding Rights Network, a research network focusing on fundamental rights and emerging neurotechnologies. We would like to make a submission to the Parliamentary Joint Committee on Human Rights in relation to the Inquiry into Australia's Human Rights Framework.

In relation to the question of whether a Federal Human Rights act should be enacted, the Australian parliament faces a profound, far-reaching and historic choice. As most of the authors of this submission are not Australian citizens, we consider any suggestion as to whether it should adopt an act that restructures the relation between the Australian people and its government inappropriate. However, should the Australian parliament decide to adopt such an act, we wish to draw attention to emerging human rights challenges with respect to the human mind that may be associated with the emergence of neurotechnologies, and their increasing commercial applications.

When seeking inspiration for a Human Rights Act, Australia might look to the international human rights covenants and conventions ratified by Australia as well as the diverse constitutions around the world. A majority of them, however, fall short of providing explicit, coherent, and possibly adequate protection to one aspect that should be central to any legal instruments securing the human person – the human mind.

This lacuna might become especially problematic with respect to emerging neurotechnologies that gather brain data by measuring neural activity (e.g. via electroencephalography, EEG) or close correlates (e.g. via near-infrared spectroscopy, NIRS), or stimulate the brain directly (without the mediation of sensory stimuli). Their development and deployment is advancing at a rapid pace. Although some of the stories that Committee members may have encountered in the popular media might paint an oversimplified picture, the convergence of neurotechnologies and artificial intelligence (AI) sets a trajectory which is hard to estimate at present. For the sake of clarity, AI is used as a catch-all term for any instance when a computer system can perform tasks that mimic human intelligence, such as learning or problem solving.

A Human Rights Act should anticipate the developments in neurotechnology and prepare society for possible sudden and disruptive technological breakthroughs.

In particular, the Human Rights Act should provide for robust protection against unconsented

- measurements of neural structures and brain activity through neurotechnology,
- modification or manipulation of brain activity through neurotechnology,
- processing of brain data (i.e. digital processing of signals recorded from the brain or wider nervous system).

Specifically, the application of fast developing AI techniques, especially machine learning with deep neural networks and emerging generative AI methods, can lead to ways of analysing, predicting or influencing brain data that are hard to foresee. Such AI-neurotechnology combinations are likely to have significant societal impact in the foreseeable future, by enabling not only clinical but also consumer products, such as monitoring cognitive health and well-being, optimizing brain fitness and performance, or playing virtual games.

One should also bear in mind that risks may arise from private actors such as IT companies combining services of social media or business applications with neurotechnologies. Moreover, the human mind may be increasingly threatened by techniques that do not obviously count as, but may derive crucial information from, neurotechnologies (for example, sophisticated forms of nudging, indoctrination or manipulation online).

The current international human rights framework provides some protection against unconsented uses of neurotechnologies, but may fall short of providing a comprehensive and coherent protection to the human mind. This has given rise to a lively scholarly debate that has been taken up by international organizations concerned with human rights. While some scholars suggest adopting several new so-called *neurorights*, others favour a single novel right to *cognitive liberty*, still others favour an evolutive interpretation of established rights, especially to *privacy*, *mental integrity* and *freedom of thought*. But despite these differences, there is wide agreement that current law with respect to the human mind is unclear, imprecise, incoherent, and contains gaps with respect to neurotechnologies that must be addressed.

To address emerging challenges from biotechnologies, the European Union explicitly adopted a right to “mental integrity” in article 3 of its Charter on Fundamental Rights and Freedoms, proclaimed in December 2000. Recently, the Republic of Chile has amended article 19 of its constitution (Law Nº 21.383,

proclaimed in October 2021¹) to encompass “psychological integrity” (“integridad psíquica”) including the protection of “brain activity, as well as the information derived from it”. The risks and challenges for human rights resulting from neurotechnology have also been addressed by domestic soft law instruments such as the Spanish Charter on Digital Rights. Two international documents in the Americas have been developed following these national initiatives: the Model Law on Neurorights for Latin America and the Caribbean approved by the Latin American Parliament (*Parlatino*) (XXXVII Ordinary General Assembly, May 2023²) and the Declaration of Inter-American Principles on Neurosciences, Neurotechnologies and Human Rights approved by the Inter-American Juridical Committee of the OAS (March 2023, CJI/RES. 281 (CII-O/23) corr.1³).

Attention should also be drawn to the recent Report of the International Bioethics Committee of UNESCO (IBC) on the ethical issues of neurotechnology (UNESCO SHS/BIO/IBC-28/2021/3 Rev., 2021) and to the UN Human Rights Council’s Resolution on Neurotechnology and Human Rights (October 2022, A/HRC/RES/51/3). These are notable developments that, in our view, could inspire an Australian Human Rights Act.

Many members of the Minding Rights Network have worked and written on these issues for several years. We attach a link to a recent paper co-authored by many of them to peruse at your convenience. Should you be interested in hearing more about the problem and potential legal responses, please do not hesitate to contact us.

Paper referred to in text

<https://www.cambridge.org/core/journals/cambridge-quarterly-of-healthcare-ethics/article/minding-rights-mapping-ethical-and-legal-foundations-of-neurorights/2F3BD282956047E1E67AA9049A2A0B68>

Signatories to the submission (alphabetical order by surname)

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¹ Link to the official version in Spanish: <https://www.bcn.cl/leychile/navegar?idNorma=1166983>

² Link to the official document in Spanish: <https://parlatino.org/wp-content/uploads/2017/09/leym-neuroderechos-7-3-2023.pdf>

³ https://www.oas.org/es/sla/cji/docs/CJI-RES_281_CII-O-23_corr1_ESP.pdf

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