

# Submission to UN digital technology, social protection and human rights



## Introduction

Rather than provide case study based responses to the consultation questions, the following responses have been distilled from over 20 years of international research on the computerisation of social security in Australia, the UK and OECD that I have conducted. My work includes contemporaneous studies as well as historical studies back to the first uses of computerisation in Australia and UK social security systems.

## Responses to Consultation Questions

### *Impact of digital technologies on national social protection systems*

Computer (or digital) technologies have been deployed in social security/protection systems in many OECD countries from the 1960s onwards.

In examining computerisation in social security systems, in Australia, the UK and the OECD over a long period a number of broad observations can be made:

- Following wider patterns of computerisation and because of computerisation requiring clearly defined data and operations (Henman 1995), administrative and service delivery processes in social protection systems that were first computerised were in financial and accounting, and record keeping, especially social insurance contributions (Henman & Adler 2001). Areas of administration and service delivery involving more discretionary input and/or nebulous processes (especially in social assistance) typically have been computerised much later, if at all. Processes of automation of social assistance (particularly in UK, but also in Europe) were associated with an increasing codification of social assistance policies and reduced discretion (Adler & Henman 2005a; 2005b; Henman & Ader 2003), partly in accordance with welfare rights movements to shift from 'discretionary charity' to 'specified rights' with concomitant improvements in consistency in administrative decision-making. Loss of discretion simultaneously reduces the ability of systems to respond to each person's particular circumstances using professional judgement and human insight.
- Automation in social security has largely been directed towards **controlling** processes and staff (and claimants), though there has been country variations whereby computerisation has been designed to support, rather than replace, decision-making frontline staff (Henman & Adler 2003; Adler & Henman 2005b).
- Automation has not systemically led to job loss in social protection systems. Rather, the productivity gains have been used to extend what these systems do, such as increasing policy change, policy complexity, and surveillance and compliance testing (Henman 1996a). Automation has, however, led to a process of deskilling in many areas, alongside an increase in the need to upskill some officers for specialised and complex cases. Often computer decision making is taken as 'objective' and accurate, with both staff and recipients deferring to these decisions, even when erroneous. In this regard, computer code becomes *de facto* policy and law.
- A growth in **dataveillance**, that is, the surveillance through data traces of claimants, which progressively is extended through data-matching processes to other government (and sometimes non-government) agencies. This is exacerbated by the growing use of *targeted* social protection, which requires a large amount of detailed personal data to be disclosed to determine eligibility (cf Eubanks 2018). More specific recent examples include Australia's Cashless Debit Card is imposed on high welfare use communities by quarantining 80% of income to be spent only at certain shops, thereby monitoring expenditure of social protection. Some jurisdictions access claimants' private social media accounts to monitor their perceived lifestyles and expenditure.

- Growing **complexity** in social protection policy, its administration and service delivery (Henman 2010), including extending eligibility conditionality to other (unrelated) systems (Henman 2010; 2011). Such conditionality is variously used to direct behavioural change and punish claimants for unrelated non-compliance in another system by using income from social protection as leverage.
- Greater **targeting**, population segmentation and differentiation, oftentimes on 'risk' assessments (such as risk of long-term unemployed, risk of overpayment/fraud, risk of non-compliance) (Henman 2004; 2006; 2010; Henman & Dean 2010). Such targeting can be used positively to better target resources and support to most in need with personalised policy and services. It can also be used negatively to more finely direct coercion, leading to major inequalities in the burden of compliance and levels of surveillance scrutiny (Henman & Marston 2008).

### ***What human rights concerns might arise in connection with the introduction of digital technologies in social protection systems?***

Concerns about **data protection, privacy and surveillance** (what are often called *digital rights*) are well rehearsed and will not be elaborated further here.

There are many **administrative and procedural justice** implications of digitisation in social protection, which in turn undermines claimants' policy rights (defined under national laws) and human rights (Article 25) to access social protection.

- Sometimes computer made decisions are not treated as equivalent to human made decisions and lack an ability to be appealable.
- The black boxed nature of computer decisions, alongside policy and administrative complexity, also means that computer decisions can de facto restrict people's access to administrative appeal, review and redress rights.
- Decisions based on 'risk' assessments are highly problematic as they assess a future based on profiles of similar characteristics, not based on actual realities. Differentiating people based on different risks can be also be quite problematic by emphasising differences when differences in risk calculations (and error scores) are small (Henman 2005).
- The growing use of conditionality in social protection, whereby claimants receive financial penalties for alleged non-compliance undermines the very nature of the system (especially in social assistance) to provide a base level of income necessary to live in that society, thereby breaching Article 25.
- The above is and will be exacerbated by the use of increasingly complex algorithms, such as AI and machine learning.

### ***What contextual circumstances affect the impact of digital technologies in specific social protection systems on human rights?***

Negative **socio-political valorisation** (or demonization) of particular social protection claimants is the largest threat to human rights by digital technologies in social protection systems. The longstanding differentiation between the deserving and undeserving poor, drives how technology is used to support versus control social protection claimants. This relationship is evident between countries in the digitisation of social protection, within countries between different social protection systems (notably social insurance and assistance), and within social protection groups (e.g. Age Pensioners and disabled are treated better than unemployed and sole parents). In Australia, we even see this difference in treatment of recipients for the

same family benefit depending on whether recipients receive it through the social security or tax systems (Henman & Marston 2008).

### ***Specific recommendations addressing both the human rights risks involved in the introduction of digital technologies in social protection systems as well as maximizing positive human rights outcomes***

**Relearn the value of universalism.** Social protection systems have always operated with a mix of universal and targeted approaches, respectively social insurance and social assistance. There is typically a much stronger support, better treatment of claimants and more positive use of digital technologies in the former than the latter. The growth of targeted approaches (within and beyond social assistance) is driven by a range of factors including financial sustainability and technology. Targeted approaches have best value when used in a positive manner to provide individualised support, and not targeting of coercion, which reinforces a negative valorisation of those targeted. Targeting social protection also generated an us/them mentality and reinforces social divisions, resulting in 'services to the poor becoming poor services'. Designing social protection that builds in universalism with targeting (e.g. everyone is covered, but to various degrees) is recommended to enhance public support and reduce the opportunities for social division.

**Regard social protection as inviolable right.** The growing use of conditionality with fines and punishments for apparent non-compliance (rather than non-eligibility) made increasingly possible via networked computer systems, fundamentally undermines the purpose of a social protection system to secure basic living standards. States should be encouraged to set an inviolable minimum level of financial support that cannot be clawed back by fines etc, and explore use of incentives for promoting behavioural objectives. I have in mind a guaranteed minimal benefit, which is different to a Universal Basic Income, in that the former is only available after testing for standard eligibility. Alongside the right to social protection should be a recognition that receiving social protection should not be at the cost of a loss of other rights, notably right to privacy, but also others. Too often people receiving social protection services do so only by trading off their other rights (eg. Eubanks 2018). Such balancing of rights must be for the intent and purpose for social protection, not as an additional form of coercion and control for those deemed 'unworthy'.

**Computer decisions must be given equal status to human decisions in law** to ensure full access to review, appeal, and redress processes. Accompanying this there needs to be **clear chain of responsibility and accountability** for all digitally made decisions. This also suggests that states should not use commercial purchased systems for automated decision making unless the algorithms can be publicly scrutinised or independently verified. Too often governments can deflect responsibility by using 'commercial-in-confidence' clauses. Citizens also need a **right to an explanation** for administrative decisions. While it has been argued such a right exists in the EU's General Data Protection Regulation, Wachter et al (2017) argues it does not exist in relation to a specific administrative decision, and nor does it apply when a computer decision is used to inform a human decision. Administrative and human rights need to be upheld regardless of the mix of human and computer in administrative decision making.

Citizens need a **right to access and correct personal data** held by social protection systems. Consideration needs to be given to improving personal ownership and autonomy by citizens of their personal data. Consideration should also be given to progressing a **right to forget** given that computers can store data indefinitely, which can in turn permanently tarnish a person's rights well beyond the period of the original action.

The concept of **digital human rights** must be developed more broadly. The UN's Declaration of Human Rights have been very important. The rise of digital technologies bring to the fore new dimensions of these rights and potentially reconstitute them in different ways. A program of research about how to rethink all the Declaration's human rights in a digital age is important and urgent.

## About UQ's Centre for Policy Futures and Author

### The University of Queensland, Centre for Policy Futures

Created in 2017, The University of Queensland's Centre for Policy Futures (CPF) aims to enhance the University's position as a key source of ideas and insights on the policy priorities that matter to Australia and the Pacific region. It does this through robust, rigorous and timely research and sustained policy engagement. The Centre's researchers, affiliated senior associates and visiting fellows pursue a vibrant research program focused on independent and peer-reviewed research, as well as commissioned reports, discussion papers, and policy briefs. Working closely with governments, international organisations, and key stakeholders, the Centre specialises in three policy areas:

- Science, Technology and Society
- Sustainable Development Goals and Capacity- Building
- Trade, Foreign & Security Policy

In addition to its research program, the Centre provides policy engagement and studies, as well as executive education involving academics across UQ and beyond. This approach enables the Centre to be flexible and responsive to policy matters as they arise.

The Centre is leads a multi-million dollar **CSIRO-UQ research collaboration on responsible innovation**. This work covers questions of regulation relating to a wide range of emerging technologies, including AI and digital technologies, synthetic biology and DNA manipulation, hydrogen and nuclear energy cycles, and health monitoring and detection technologies. At UQ, this collaboration involves a Principal Research Fellow, a Postdoctoral Research Fellow for Digital Human Rights, a Postdoctoral Research Fellow on the governance and regulation of synthetic biology, and eight PhD students involved in various projects relating to responsible innovation of new and emerging technologies being developed by CSIRO.

### Associate Professor Paul Henman

**Paul Henman** is Associate Professor of Digital Sociology and Social Policy, School of Social Science, and Principal Research Fellow, Centre Policy Futures at the University of Queensland. In the latter role is leads the Science, Technology and Society research program, and the CSIRO-UQ Responsible Innovation partnership. As outlined below, he is ideally placed to provide expert advice into this UN consultation.

Paul has over 20 years of active research in digital technologies and public governance. His research covers the use of digital technologies by government for the operation of government (including policy making, service delivery, governance of agencies), as well as the use of digital technologies for governing and governance. Whilst Paul's research has focused on governments' use of digital technologies, his work also provides insights for the private and NGO sectors.

In particular, Paul's research has investigated the ways in which new digital technologies have shaped the types of policy and services that can be and are enacted. His work predates current concerns about algorithms in profiling and targeting by over a decade. In the early 2000s, he identified the policy, social and ethical dynamics associated with digital technologies' disruption of public policy and administration principles, often leading to increased inequalities (e.g. Henman 1997; 1999; 2002; 2004; 2006; 2010; Henman & Adler 2003)

Significantly, Paul's research rests on interdisciplinary training in computer science (holding an award winning first class honours degree, 1989), and in sociology of technology and social policy (PhD, 1996). To date, he has managed almost \$7 million in research funding, including from the Australian Research Council, IBM, CSIRO, and the former National Office for the Information Economy. He has published 4 books and over 70 academic papers. He is currently leading an international comparative study of government web portals in 10 countries.

Importantly, Paul has also worked in the Australian government as a policy analyst (1996-99) thereby providing him with important insights into the way in which governments, policy, administration and service delivery operate. Consequently, he has regularly contributed to government and independent inquiries regarding regulation of new technologies, including the Australian Law Reform's 2003 inquiry into genetic testing, the 2009 Australian *Government 2.0 Taskforce*, Australia's Parliamentary Joint Committee on Intelligence and Security *Identity-matching Services Bill 2018* Inquiry, and the Australian Human Rights Commission's consultations on *New Technology and Human Rights* and *AI Governance and Leadership White Paper*.

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