Technology and the Law

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What is the Rule of Law?

- Equality Before the Law
- Checks and Balances on the Use of Power
- Rights of the Accused and Victims
- Presumption of Innocence
- Independence of the Judiciary
- Right to Assemble
- Freedom of Speech
- Access to Justice
- Knowing the Law
Cyber Crime Definition

- fraudulent financial transactions
- identity theft
- theft of information for commercial gain/piracy
- drug trafficking
- money laundering
- image based sexual abuse
- harassment, stalking and other threatening behaviours
- terrorist recruitment and propaganda
Data Breach Notification Laws

- Data breach Legislation - Privacy Amendment (Notifiable Data Breaches) Bill 2016
- Passed by Parliament 22 February 2017
Amends the Privacy Act 1988 (Cth)

“An eligible data breach happens if:

(a) there is unauthorised access to, unauthorised disclosure of, or loss of, personal information held by an entity; and

(b) the access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the information relates.

An entity must give a notification”
Crimes Amendment (Intimate Images) Act 2017 provides that:

it will be an offence for a person to intentionally record or distribute, or threaten to record or distribute, an intimate image of another person without that person’s consent.

Intimate image is defined to mean an image of a person’s private parts, or of a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy.

The maximum penalty will be imprisonment for 3 years or 100 penalty units, or both.
National Security 1960 to 2016

1960 – Only ASIO could tap phones in relation to matters of national security:

“"the security of the Commonwealth" means the protection of the Commonwealth and the Territories from acts of espionage, sabotage or subversion, whether directed from, or intended to be committed, within the Commonwealth or not;’

Telephonic Communications (Interception) Act 1960

1979 – TIA Act, police receive more powers to intercept phone calls in drugs investigations

80s, 90s, 00s – broader powers to access communications, and “stored communications”, and METADATA.

2015 – mandatory retention of METADATA

2017 - Attorney-General’s Dept. Review calls for submissions on whether metadata should be available for use in civil cases
What is metadata:

WHO | WHEN
WHERE | HOW

about a communication.

so you can think about **WHY**:

- Someone is calling someone else?
- they spent 20 minutes on the phone with them at 2 in the morning?
- did they text/sms that person 20 times in one day?
- was that email attachment 20mb?
Mandatory retention of metadata

Telecommunications companies like Optus, Telstra, iiNet, etc... were no longer keeping metadata.

Intelligence and law enforcement agencies pushed for a law that required companies to keep this data for use in investigations.

Law passed in 2015 requires all telcos to keep 2 years worth of metadata.

Intelligence and law enforcement can access this data in investigations relating to crime or national security.
Concerns about mandatory data retention

Issue 1 – Who decides what metadata is?

Issue 2 – Self Authorisation to access metadata

Issue 3 – Who can access metadata?

Issue 4 – Journalists, Freedom of the Press and Metadata
Balancing Acts

Criminal investigations & metadata: metadata used to catch a murderer

National security and the safety of the community

AND

Individual rights and freedoms

Too many checks and balances

AND

Too few checks and balances
Does metadata retention work? #effectiveness

• Rick Sarre - Professor of Law and Criminal Justice University of South Australia says

• it can be defeated - hence the emphasis on encrypted data...there is no guarantee that it is not being shared internationally...it costs approx $750 million over 10 years...there is little evidence of a causal link to reducing attacks...and it’s a threat to privacy
What about Privacy – should we have a Charter of rights?

Statutory or Constitutional? (Where?)

Privacy is not absolute, what kind of privacy do we want? (What?)

How would a charter protect rights in a practical sense? (How?)

National security and effective law enforcement is fundamental, as is having a society where we respect individuals (Why?)
Key Legislation

- Crimes Amendment (Intimate Images) Act 2017 (NSW)
- Data breach Legislation - Privacy Amendment (Notifiable Data Breaches) Bill 2016
- Amends the Privacy Act 1988 (Cth)
- Recent legislation: Carly’s law - Criminal Code Amendment (Protecting Minors Online) Act 2017 amends the TIA act and the Criminal Code Act 1995 (Cth)
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