

# Supporting Material for Media Release of 14 November 2012

The Media Release is at <http://www.privacy.org.au/Media/MR-NEHTA-111114.pdf>

## The Sequence of Events

In late 2011, APF's nominee, its Chair, Roger Clarke, participated in a couple of NEHTA events of a technical nature. (They related to security standards and technical risk assessment).

The discussions were conducted professionally, the technical understanding among participants was strong, and their privacy understanding was good as well.

Very substantial problems were evident, however.

Clarke sent Notes immediately following the second event, which identified those problems.

After a 9-day delay, NEHTA provided comments on the Notes that he had sent.

Clarke was appalled by the complete lack of any constructive response.

Clarke said so, in an email dated 29 October 2011. A copy is attached.

NEHTA's Head of Policy & Information Services, Bettina McMahon, wrote to Clarke, saying she was concerned about the email.

She did not explain then, and she did not explain at any subsequent time, what specifically she was concerned about.

But she referred to "an attack in [my] email", and wrote that "if the email ... was sent by someone internal to NEHTA to [a NEHTA staff-member], [that staff-member] would have grounds to raise a harassment claim against that person".

Ms McMahon demanded an undertaking from Clarke that he not write this way again.

The segments of McMahon's emails that express her accusations and demands are attached, and Clarke's responses to them are interspersed, in date order.

On 8 November, McMahon concluded that "we will need to assess each correspondence from you [via] [admin@nehta.gov.au](mailto:admin@nehta.gov.au)".

Clarke replied that he would copy all subsequent emails to that address.

On 9 November, Clarke emailed to a NEHTA officer regarding travel arrangements for an event on 14-15 November. He sent a copy to [admin@nehta.gov.au](mailto:admin@nehta.gov.au).

On 10 November, the NEHTA officer said she was under instructions from Ms McMahon that Clarke was not to be involved in any further NEHTA events.

Clarke urgently emailed Ms McMahon, seeking clarification about this escalation of her already exaggerated and entirely non-constructive reaction. By phone that evening:

- McMahon confirmed that she had issued that instruction, and considered herself to have the organisational authority to do so
- she stated that the grounds for taking both actions were that:
  - the email "was inappropriate"
  - Clarke had declined to comply with her demand that he commit to not "sending emails like this to NEHTA staff in the future" (which is a correct statement of the position)
  - Clarke had advised that he was likely to communicate in an inappropriate way in the future (which is a fabrication on Ms McMahon's part)
- she acknowledged that she had no evidence of Clarke on any occasion using "inappropriate" speech in any meeting with NEHTA staff

## The Email in Question

Roger Clarke's email to the relevant NEHTA staff:  
Sat, 29 Oct 2011 11:27:46 +1100

I'm flabbergasted at the uselessness of your responses.

I infer from the expression "our comments" that you are representing your comments as being those of NEHTA as a whole.

If that's the case, then the policy staff are not playing a role as a facilitator. You're instead acting as a barrier, preventing the design teams from gaining an understanding of the concerns of consumer and privacy advocates.

Your refusal to address the issues leaves me with no option but to inform the APF Board that:

- your responses to the concerns expressed were variously excusatory and obstructionist
- not one, single concern has been addressed in a positive manner
- yet again, privacy advocacy participation in a process has been a complete waste of time, because policy staff are precluding effective interactions between civil society and the designers

In those circumstances, the only possible outcome is that the APF's public stance will be re-affirmed.

NEHTA blocks every attempt by civil society to ensure that these initiatives are designed in a privacy-sensitive manner. People who value their privacy need to use all available means to avoid their data being caught up in the national database that NEHTA is seeking to build.

Yours in complete disgust at your response ... Roger Clarke

## Ms McMahon's Accusations and Demands and Clarke's Responses

McMahon on Sat, 29 Oct 2011 18:42:18 +1000

I was surprised, to put it mildly, to read your email this afternoon. ...

I cannot accept the sort of communication below going to one of my staff members. When my staff are acting diligently and respectfully towards others, at the very least I expect respectful communication back. We both represent professional organisations and our communication needs to reflect that. While I see that you are upset with [staff-member's] response to you, it in no way warranted the attack in your email. My words may seem harsh, but if the email below was sent by someone internal to NEHTA to [staff-member], she would have grounds to raise a harassment claim against that person. So as a benchmark of the sort of professional communication we require in our work, the email doesn't meet the test. ... The actions you wish to take are up to you, Roger. I would hope that you will continue to work with us, but I will need to know that you will resist sending emails like this to NEHTA staff in the future if we are to work together.

Clarke on Sunday, 30 October 2011 5:39 PM

... the comments provided in response to my Notes on the 18 October Workshop were appalling ...

Over a period of 3 years, APF has provided many submissions expressed politely. When those were ignored, we upgraded the expression to 'firmly'. They have not achieved constructive responses from your organisation. It's apparent that we have to use direct speech.

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McMahon on Tue, 1 Nov 2011 07:16:39 +1000

... it appears that you consider your communication to [staff-member] as appropriate. I think you are also saying that you will continue to communicate in this way in some circumstances ...

... my request that you do not send this type of communication again ...

Clarke on Tue, 1 Nov 2011 09:01:32 +1100

"We express things as we feel we need to, in order to convey each particular message. For submissions, we normally adopt a straightforward business style. For informal communications (e.g. about logistics), we normally adopt a more relaxed style. When the points we make are ignored, we express things more firmly. Because of the highly unsatisfactory nature of our dealings with NEHTA and DOHA over a period of years, quite a few of our submissions have had to be expressed 'more firmly'".

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McMahon on Mon, 7 Nov 2011 19:08:50 +1000

1) ... you see your email correspondence as appropriate

2) ... you have advised me that **you are likely to communicate in this way again in the future**

... your communication creates a risk of bullying and harassment ...

... you have confirmed you may continue with this behaviour ...

... we will need to assess each correspondence from you to determine whether it is an appropriate communication ... If it contains any bullying type communication we will advise you that we will not be sending it on to the relevant staff, but if you resubmit your correspondence in a way that does not contain any bullying or harassing comments, we will forward it on ...

... your decision to defend your email communication and to reinforce **the fact that you will do this again** ...

... sending harassing emails ...

Clarke on Tue, 8 Nov 2011 10:57:21 +1100

When I reviewed the email that you're so upset about, I could see four words that people might call strong - "useless", "excusatory", "obstructionist" and "disgust". All of them related specifically to "your responses", and certainly did not relate to the addressee personally.

Further, I stated my assumption that the comments I was appalled by were a corporate response, i.e. that the staff-member who sent them to me, and to whom I was, in the normal course of business, responding, was the messenger, relaying content variously prepared by her, prepared by her based on others' verbal comments, and prepared by other people.

I'll continue to communicate on the same, appropriate basis as I have been doing in the past.

**You state "[I] have advised [you] that [I am] likely to communicate in this way again in the future", and you refer to "the fact that [I] will do this again". Both are misrepresentations.**

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McMahon on Tue, 8 Nov 2011 11:36:23 +1000

[You must accept] that:

- the language you used in your email was not appropriate to send ...
  - you will resist sending communication with that sort of language again in the future ...
- ... bullying or harassing communication ...

Clarke on Tue, 8 Nov 2011 13:26:11 +1100

As explained [in the previous email], **I do not accept that the language used in that email was 'bullying', 'harassment' or otherwise 'inappropriate to send to a person in a workplace'.**

As explained on 30 Oct, 1 Nov and 8 Nov, I'll use language as polite, or as firm and direct, as I judge to be necessary in the particular circumstances. Just as I have done in all my advocacy roles for industry, for consumers, and for privacy interests, since 1971.

I completely agree that there are boundaries to appropriate language. The difference in our positions is whether I've at any stage crossed those boundaries.

I have no intention of using inappropriate language in any form of communication. In almost 50 years of public life (I've been public speaking and debating since I was 13), I can't recall an occasion on which there's been a need for me to apologise for the expression of anything I've written or spoken. (As distinct from the content, which from time to time can end up needing clarification and sometimes correction).