

The Contested Semantics of 'Security' and the Curious Case of PIAs applied to National Security Initiatives

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<http://www.rogerclarke.com/DV/PIANS> {.html, .pdf}

Peace Research Institute Oslo (PRIO)

29 August 2016

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The Notion of Security

A condition
in which harm does not arise
despite the occurrence of threatening events

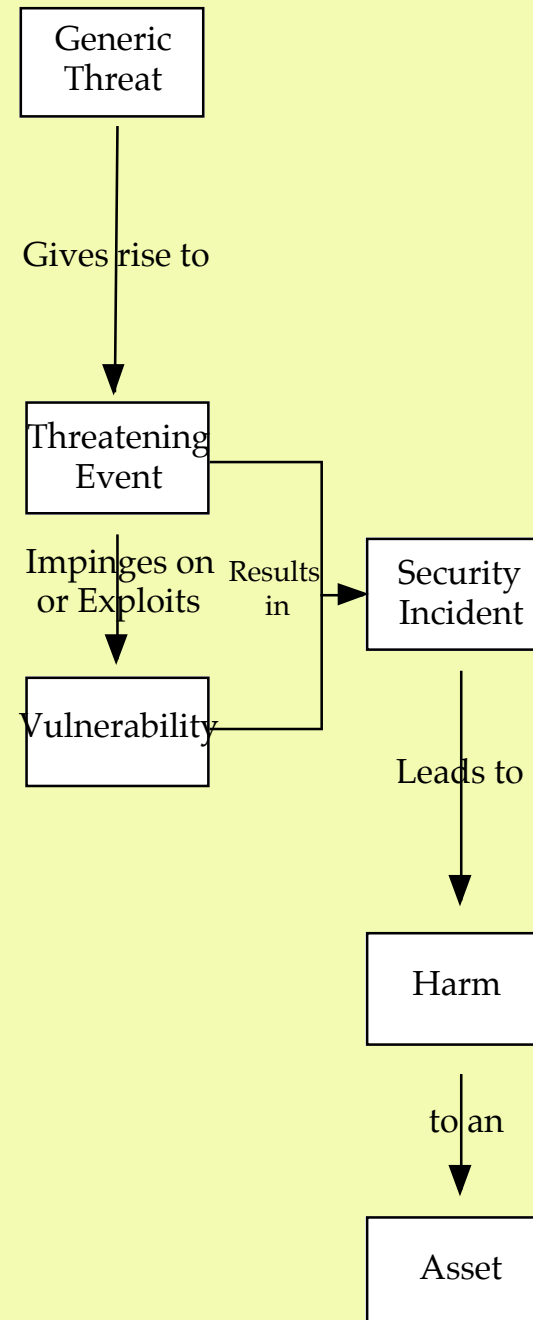
A set of safeguards
whose purpose is
to achieve that condition

The Conventional Security Model

Key Concepts

- A **Threat** is a circumstance that could result in Harm
 - A **Threatening Event** is an instance of a generic Threat
 - A Threat may be natural, accidental or intentional
 - An intentional Threatening Event is an **Attack**
 - A party that creates an Intentional Threat is an **Attacker**
 - A **Vulnerability** is a susceptibility to a Threat
 - **Harm** is any kind of deleterious consequence to an **Asset**
-
- A **Safeguard** is a measure to counter a Threat
 - A **Countermeasure** is an action to circumvent a Safeguard

The Conventional Security Model



[http://www.rogerclarke.com/
EC/PBAR.html#App1](http://www.rogerclarke.com/EC/PBAR.html#App1)

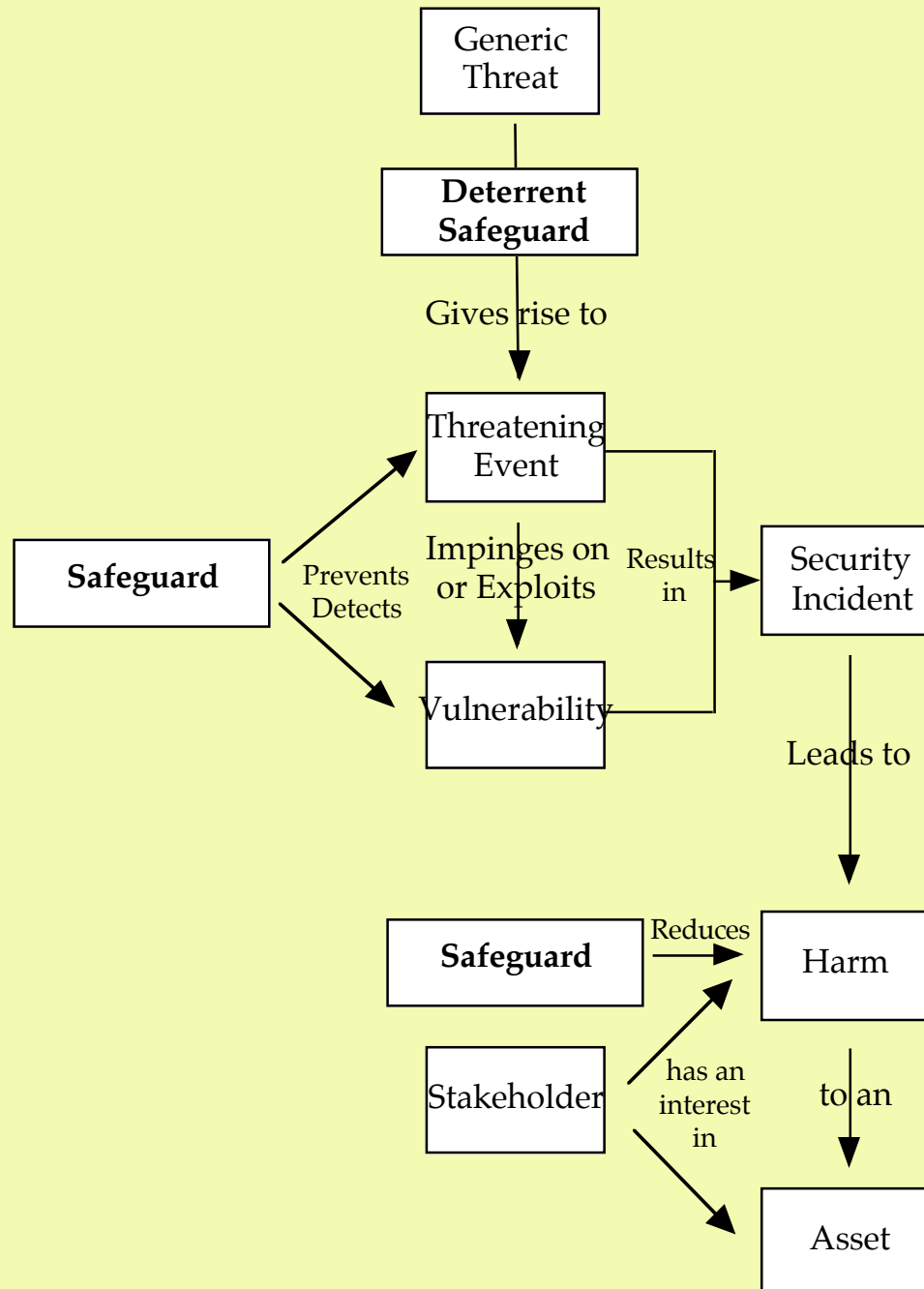
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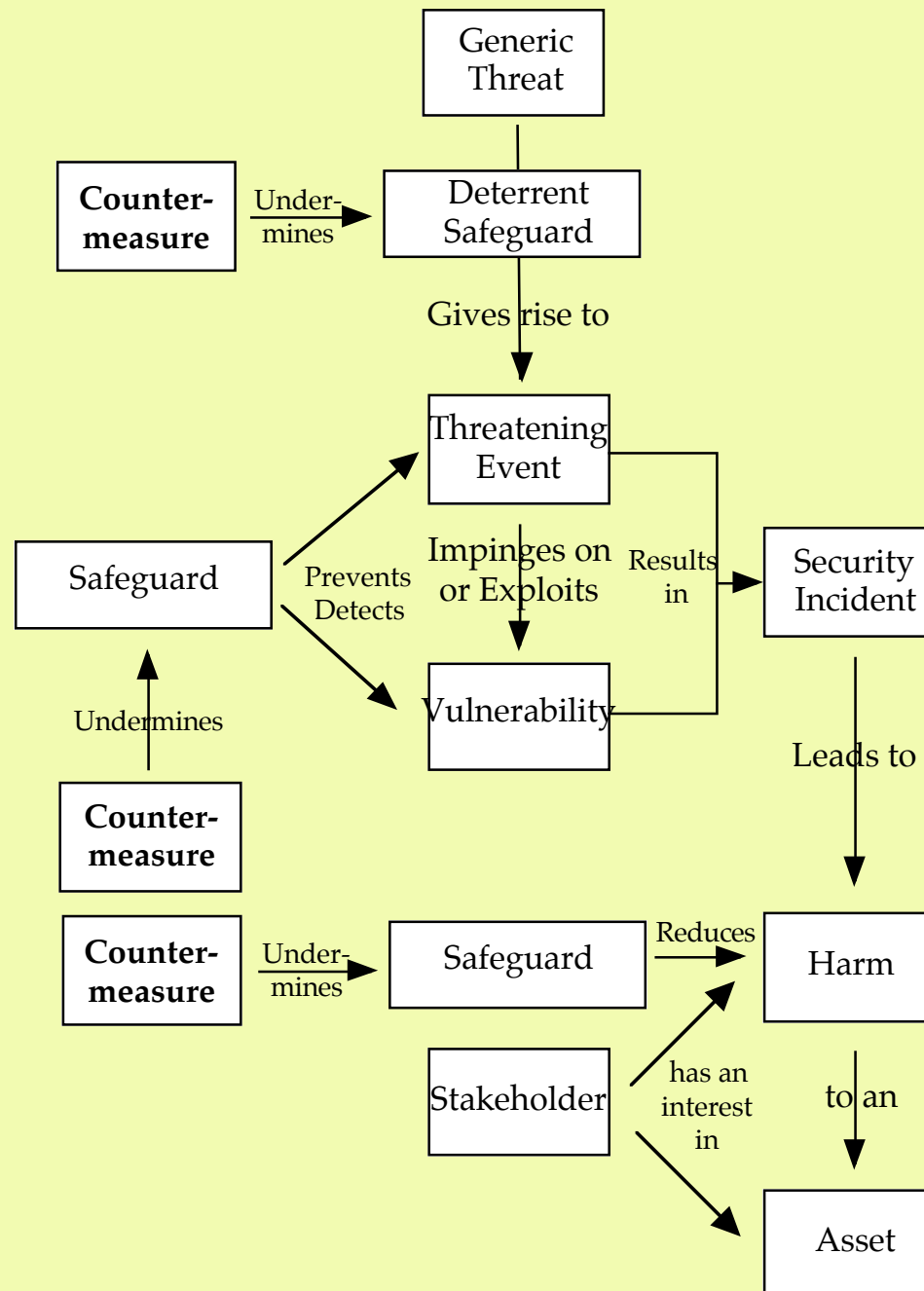
The Conventional Security Model + Safeguards

[http://www.rogerclarke.com/
EC/PBAR.html#App1](http://www.rogerclarke.com/EC/PBAR.html#App1)

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The Conventional Security Model + Countermeasures



<http://www.rogerclarke.com/EC/PBAR.html#App1>

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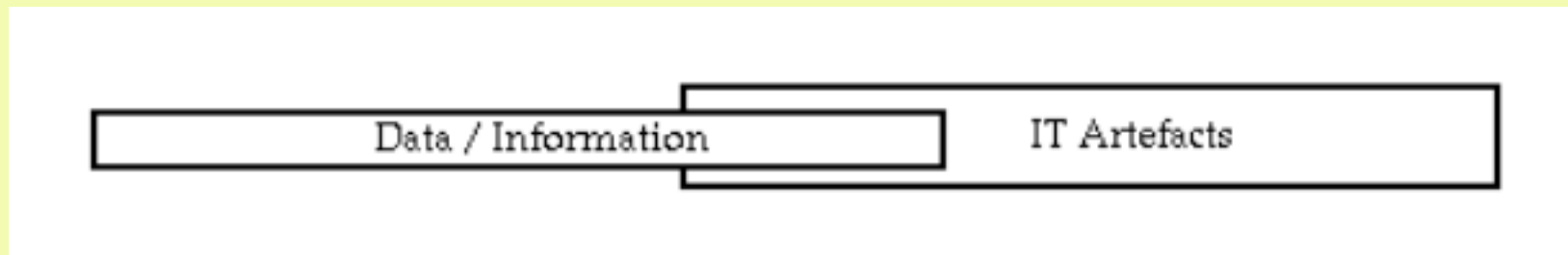


Asset, Harm, Value, Stakeholder

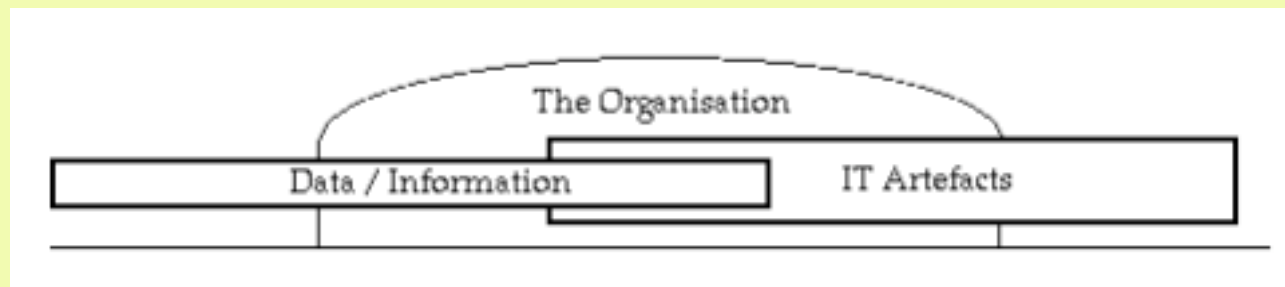
- **Harm** means deleterious impact on an **Asset**
- But which Harm matters, to which Assets?
- That depend on the perspective that's adopted and the **Values** that are perceived in Assets
- So it's necessary to define **Stakeholders**

'Whose Security?'

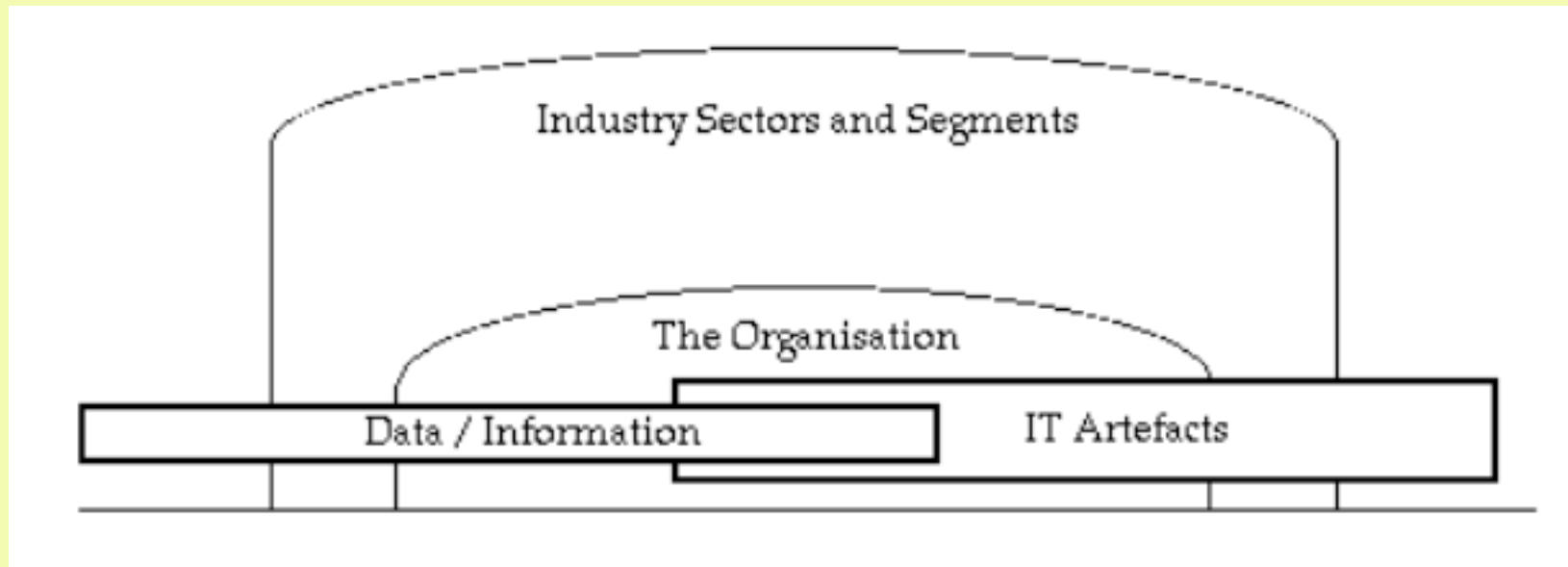
The Scope of Security



The Organisational Scope of Security

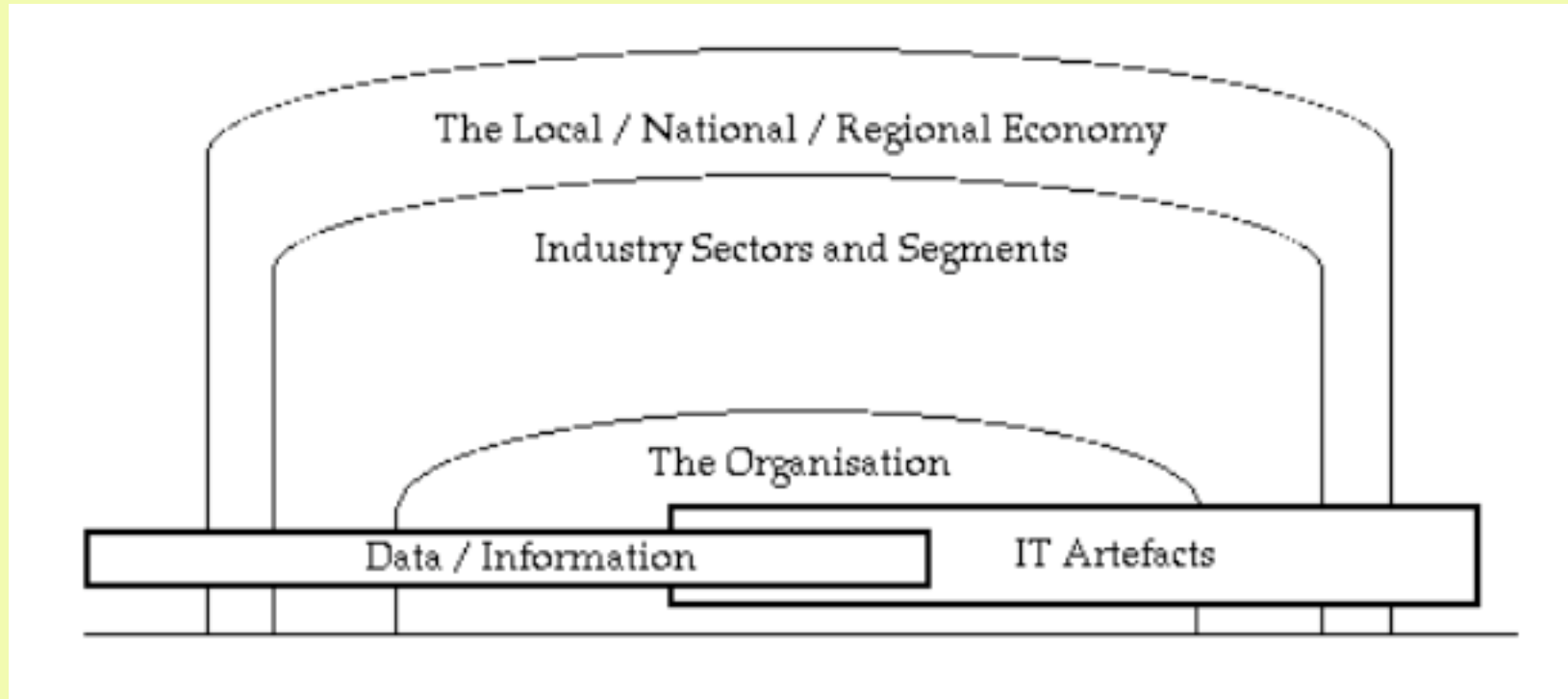


A Broader Scope for Security



Competition between Corporations
Collaboration, esp. re IT Infrastructure

A Yet Broader Scope for Security

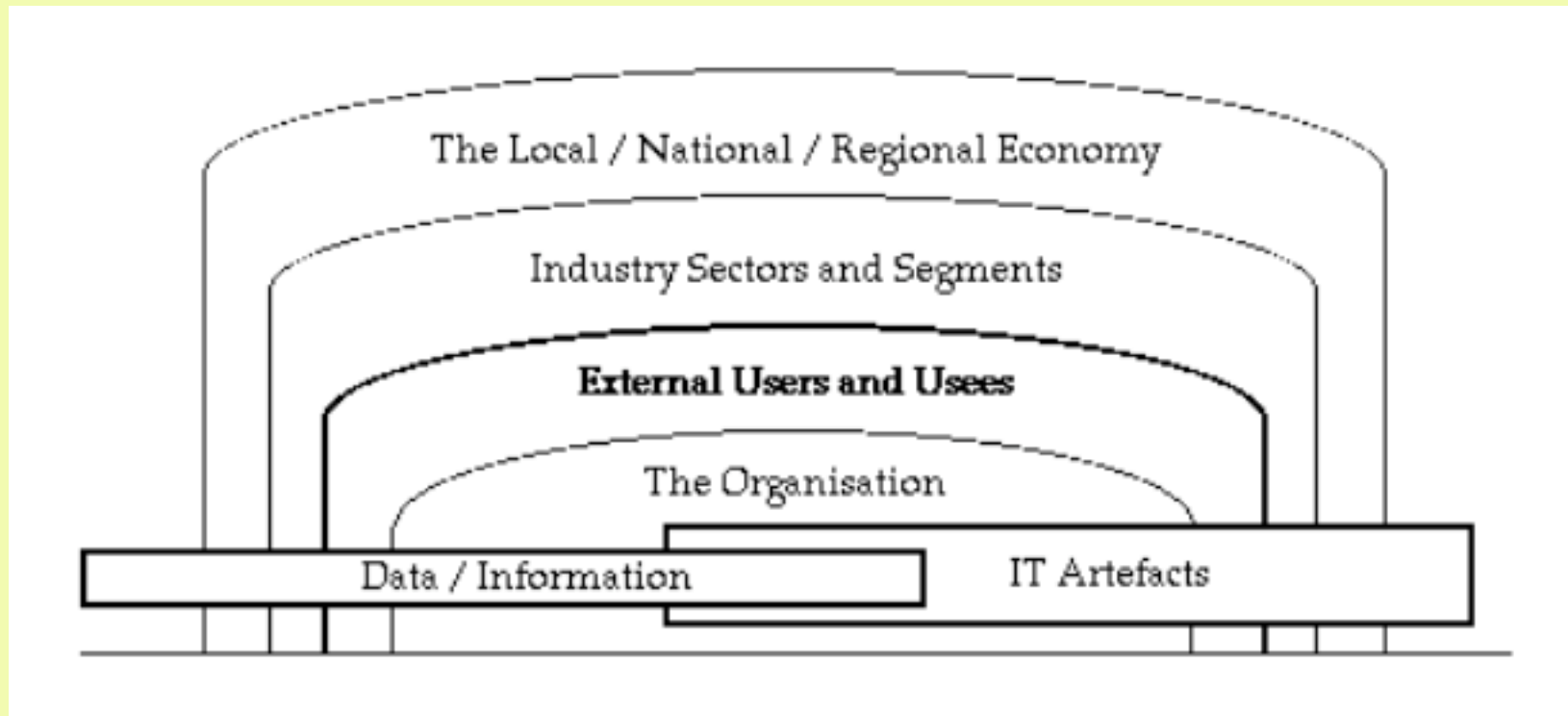


IT Infrastructure for Economic Development
Competition among Nations
'Critical IT Infrastructure'

Industry Sectors Designated by Governments as 'Critical Infrastructure'

- **Military-Industrial
incl. Cryptography**
- **Transport**
- **Communications**
- **Energy**
- **Water**
- **Public Health**
- **Emergency Services**
- **Law Enforcement**
- **Agriculture**
- **Financial Services**

A Mostly-Forgotten Scope for Security



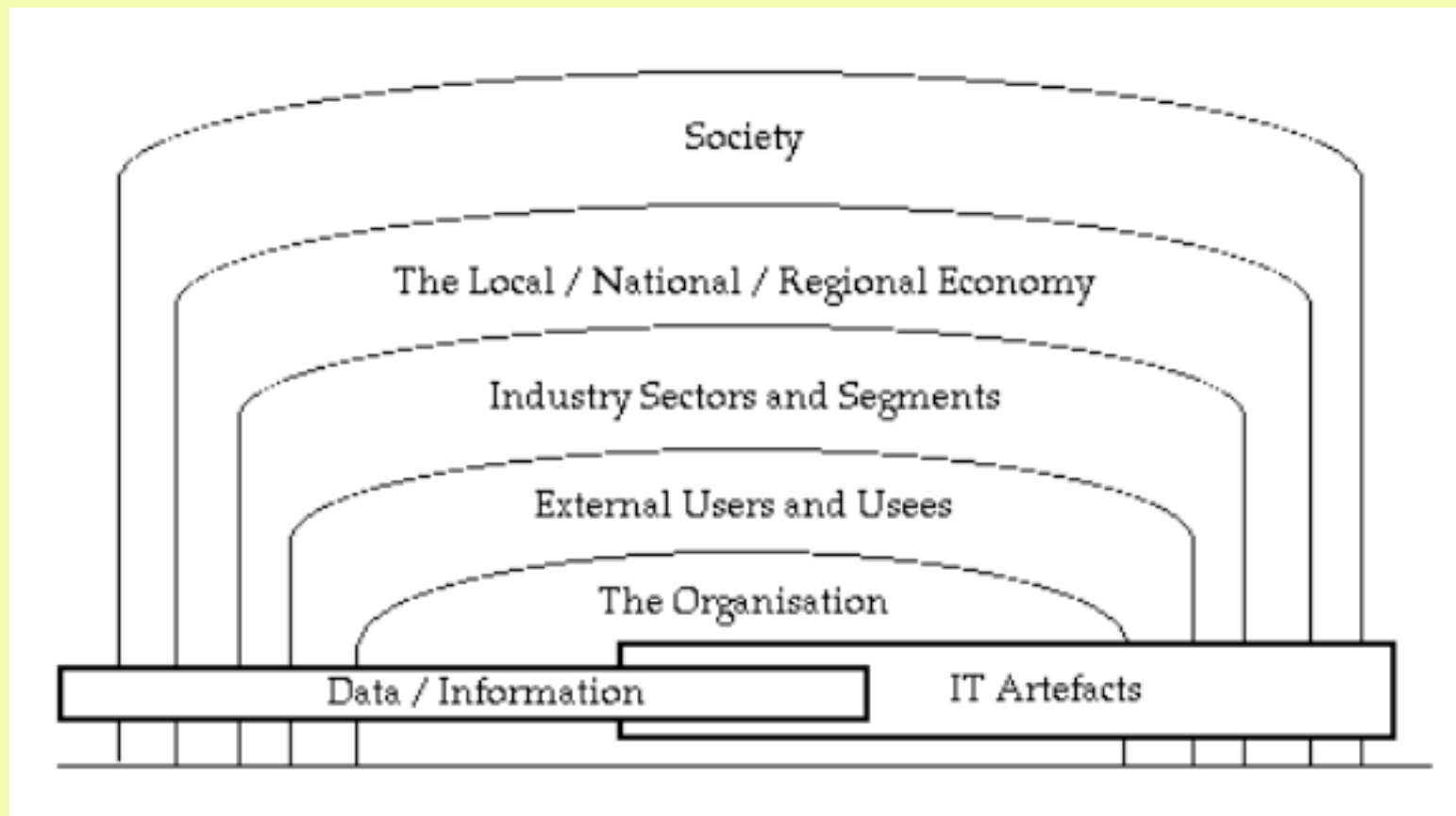
Tensions

- **Among Organisational Objectives**
 - Certain Costs vs. Contingent Costs
 - Financial Cost vs. Non-Quantifiables
 - Business-As-Usual vs. Invisibles

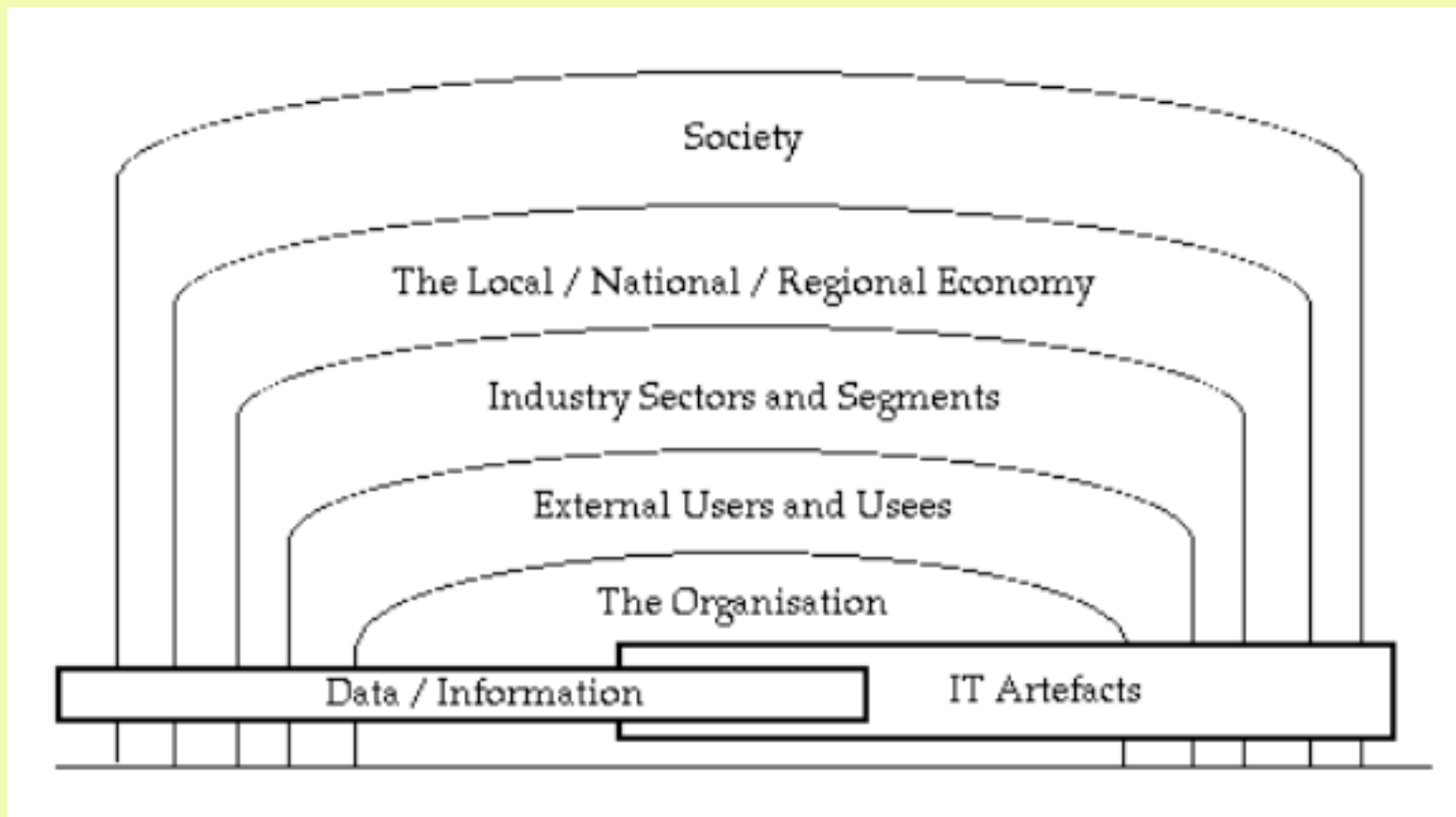
Tensions

- **Among Organisational Objectives**
 - Certain Costs vs. Contingent Costs
 - Financial Cost vs. Non-Quantifiables
 - Business-as-usual vs. Invisibles
- **Among Alternative Scope Definitions**
 - A bot doesn't harm the host, so there's no incentive to fix it (it's an 'externality')
 - Copyright material on P2P networks
 - Personal, Organisational, Sectoral, National, Supra-National Agency Interests

The Contested Semantics of 'Security'



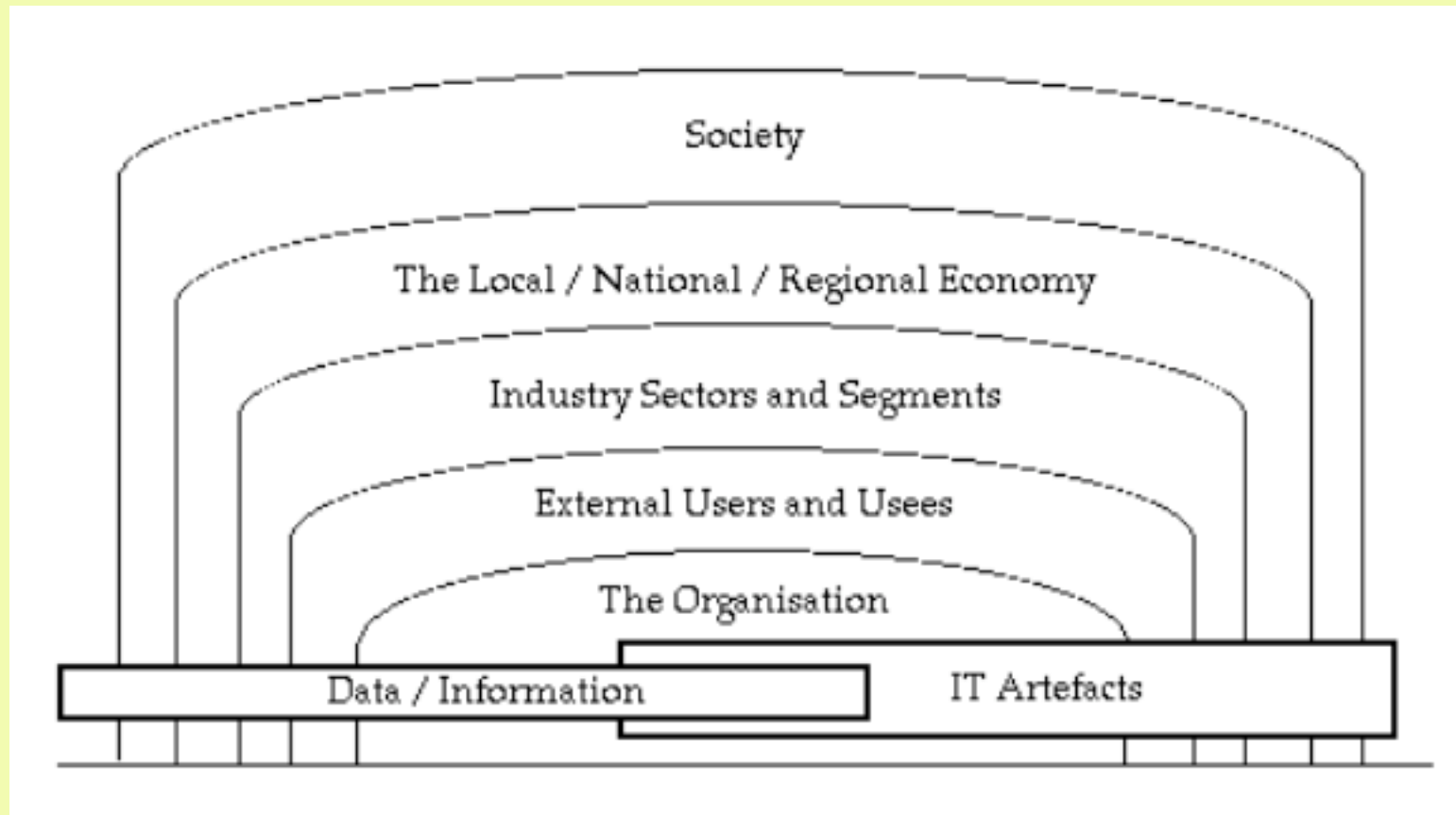
The Contested Semantics of 'Security'



What about Humanity?

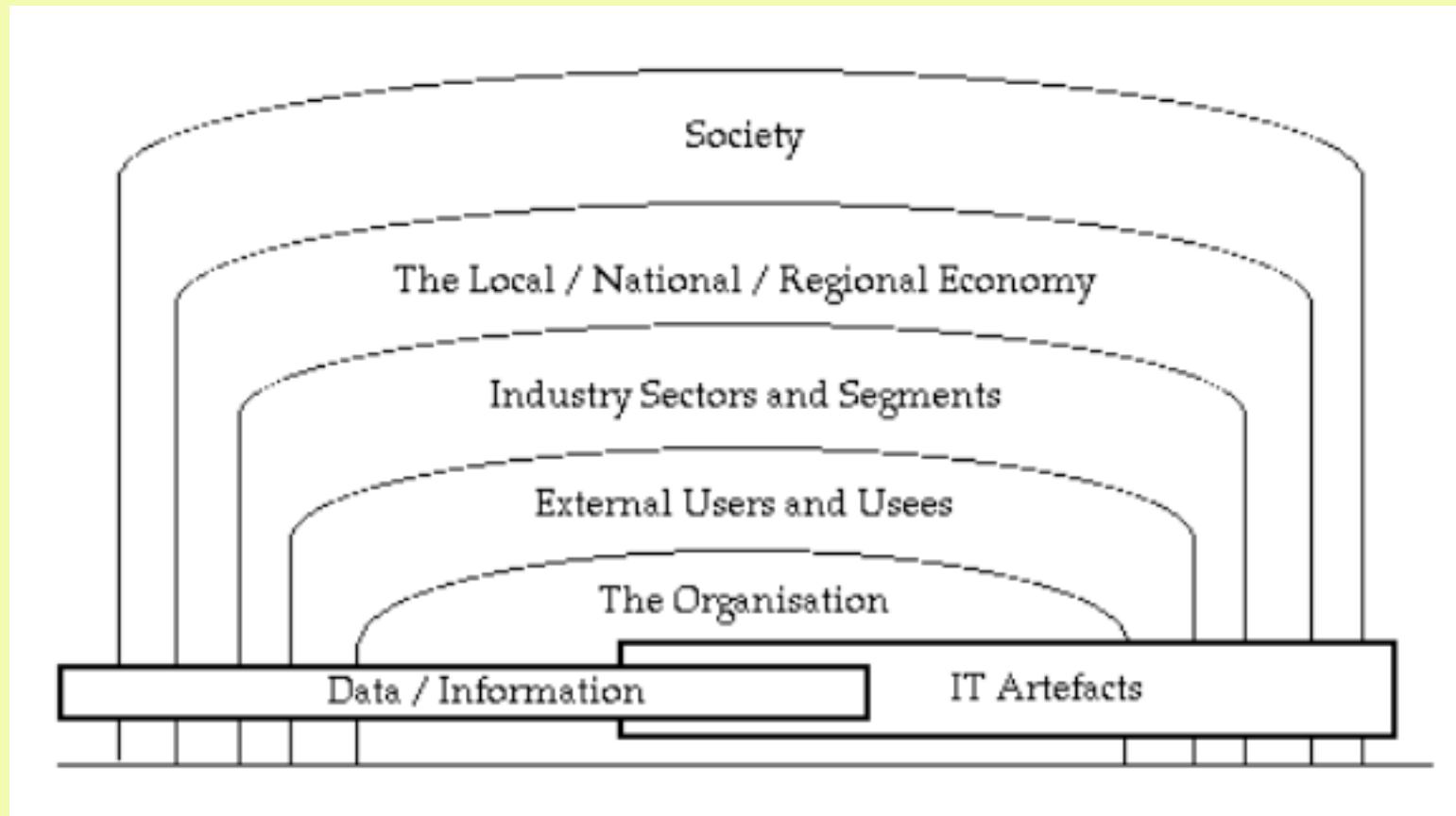
What about the Biosphere, the Troposphere?

Who are the Champions for Each Perspective?



Which have Power?
What Coalitions are feasible?

And where is 'National Security'?



Is this 'National Security'?

The protection of a nation from attack or other danger by holding adequate armed forces and guarding state secrets

Encompasses economic security, monetary security, energy security, environmental security, military security, political security and security of energy and natural resources

<http://definitions.uslegal.com/n/national-security/>

"specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy"

US Freedom of Information Act

Or is this 'National Security'?

- **Critical Infrastructure Security**
Bombs in ports, ships, railways, energy, ...
Anthrax in the water supply, ...
- **Public Safety**
Bombs in aircraft, mayhem in marketplaces
Major Events, e.g. 'The Euros', The Olympics
- **Prominent Person Safety**
Bush and Blair; Rushdie and Kurt Westergaard
Gx, APEC, CHOGM, ...

'Terrorism' conflated with 'National Security'

The use of violence or the threat of violence,
especially against civilians,
in order to alarm the public,
in the pursuit of political [or politico-religious] goals

'Terrorism' and National Security

The Australian Context

- Each decade pre 2000 saw some such event(s)
- 2002 – 88 Australian deaths in Bali, at a nightclub frequented by Australians
- **2015 – 1 domestic murder by a 15yo 'lone wolf'**
That's the sole death in Australia since 2001
- Several credible claims of interdiction 2001-15
- But periodic large-scale raids have led to successful prosecutions of only 15 individuals re 6 instances of preparation to commit an act

<https://www.crikey.com.au/2014/09/04/the-real-threat-of-terrorism-to-australians-by-the-numbers/>
<http://www.abc.net.au/news/2015-02-25/fact-file3b-five-facts-about-terrorism-in-australia/6226086>

A (Maybe Uniquely?) Australian Factor

No Constitutional Protection for Human Rights

- Explicit decision at the end of the 19th century to not entrench human rights in the Constitution
There are only 6 constitutional rights: trial by jury, just compensation, discrimination in one state against a resident of another state, freedom of religion, implied (and qualified) freedom of political communication, implied right to vote
- Australia acceded to ICCPR in 1980
- Successive Governments and Parliaments have refused to comply with ICCPR obligations
- There are no legislative provisions that can provide a basis for action for breach of the ICCPR

National Security Measures Since 2001 Have Compromised Many Human Rights

- Freedom from Arbitrary Detention (ICCPR Art. 9)
- Freedom of Movement (Art. 12) =====>>
- Right to a Fair Trial (Art. 14.1), Minimum Guarantees in Criminal Proceedings (Art.14.2-14-7)
- Privacy (Art.17)
- Freedom of Information, Opinion, Expression (Art. 19)
- Freedom of Association (Art. 22)
- Other Rights Potentially at Risk (Arts. 2.1, 7, 15, 21, 24, 26, 27)

e.g. Freedom of Movement (Art. 12)

- **Preventative Detention Orders for 48 hours, extensible**
Renewable, self-issued not judicial, not subject to challenge or appeal, the person is held in secret, possible prohibition on contact with a lawyer, possible suppression of all facts re hearing – Criminal Code Division 105
- **Control Orders**
Without conviction, or even charges, for criminal behaviour, based on mere civil standard of proof, secret evidence may be used, lack of transparency, due process and review, person's identity may be secret – Criminal Code Div 104, created in 2005
- **Powers to suspend, cancel and seize passports**
– Australian Passports Act 2005 plus amendments 2014
- **(Some) Mercenary Behaviour Criminalised**
Being in a 'declared area', reversed onus of proof, few reasons permitted – CTLA (Foreign Fighters) Act 2014

Whose Security? A Case Study

PIAs and National Security in Australia

Privacy Impact Assessment

- a systematic process, which ...
- identifies and evaluates ...
- from the perspectives of all stakeholders ...
- the potential effects on privacy of ...
- a project, initiative or proposed system or scheme
- and which includes a search for ways to avoid or mitigate negative privacy impacts

Elements of the PIA Process

- **Surfacing and Examination** of the privacy impacts and implications of a proposal
- Development of a clear understanding of the Business Need that **justifies the proposal and its negative impacts**
- **Gauging of the Acceptability** of the proposal and its features by organisations and people that will be affected by it
- [**Assessment of Compliance** of the proposal with existing privacy-related laws, codes, best practices and guidelines]
- Constructive Search for, and Evaluation of, better **Alternatives**
- Constructive Search for ways to **Avoid** Negative Impacts, **and** ways to **Mitigate** Unavoidable Negative Impacts
- Documentation and Publication of the **Outcomes**

Clarke R. (2009) 'Privacy Impact Assessment: Its Origins and Development'

Computer Law & Security Review 25, 2 (April 2009) 123-135

<http://www.rogerclarke.com/DV/PIAHist-08.html>

Australian Govt Policy re PIAs

- Data-Matching 'Program Protocol' since 1990, 1992
- PIA Guidance – versions of 2006, 2010, 2014
"I strongly encourage government agencies to use the guide to assist them in playing a larger role in promoting privacy compliance" (Attorney-General, August 2006)
- Early signs of agency take-up c. 2008
- "It is expected that agencies will continue to voluntarily conduct privacy impact assessments as appropriate when developing policies which will impact on privacy"
(Second Reading Speech Sep 2012)
- PC'er power to direct an agency to conduct a PIA since March 2014 – but yet to be exercised

Efficacy of a PIA: A Five-Factor Test

1. Is there evidence of a PIA process being **performed**?
2. Were advocacy organisations **aware** of that process?
3. Did the project sponsor(s) **engage** with advocacy organisations?
4. Was the PIA **Report published** on completion?
5. Were advocacy organisations' views appropriately **reflected** in the PIA Report?

However, it was known that there was a low incidence of published Reports. Hence:

6. Did the PIA **Report come to light** later, e.g. as a result of an FoI request by the media?

Results of the Five-Factor Test

AGD

- **Passed** the 5-factor test **2/36**
- Engagement with advocacy organisations 3/36
(but their views were ignored)
- Secret (hence flawed) PIA processes 10/36

Other Agencies

- **Passed** the 5-factor test **1/36**
- Engagement with advocacy organisations 5/36

Case Studies

1. Document Verification System (DVS) 2004-15
2. ANPR Mass Surveillance 2007-
3. Telecommunications Act s.313 2013-15
4. (Meta-)Data Retention 2003-15

Case Study 4 – (Meta-)Data Retention

- 2003-11 – AGD made multiple unsuccessful attempts
- 2012-13 – AGD enlisted Parltrty 'friends of natsec' Ctee
Ran a project, with no PIA or consultation
- 2014-15 – the Bill:
 - referred to the 'friends of natsec' Ctee
 - 30 public interest advocacy submissions:
Incoherent proposal, Highly unlikely to even work let alone achieve its aims, Hugely privacy-invasive, Euro schemes have been disallowed, and failed anyway
 - No real changes, supported by Opposition
- 2015-16 – Requirements still incoherent,
Implementation appears to be stalled

Reasons to do a PIA

- **Surfacing and Examination** of the privacy impacts and implications of a proposal
- **Development of a clear understanding of the Business Need that justifies the proposal and its negative impacts**
- **Gauging of the Acceptability** of the proposal and its features by organisations and people that will be affected by it
- [**Assessment of Compliance** of the proposal with existing privacy-related laws, codes, best practices and guidelines]
- **Constructive Search for, and Evaluation of, better Alternatives**
- **Constructive Search for ways to Avoid Negative Impacts, and ways to Mitigate Unavoidable Negative Impacts**
- **Documentation and Publication of the Outcomes**

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Organisational Benefits of a PIA

- Risk Identification
- Risk Management
- Avoidance of:
 - Inadequate solutions
 - Feature retro-fitting
 - Unnecessary costs
 - Adoption impediments
 - Stakeholder uncertainty
- Informed media / communications strategy
- Competitive advantage
- Management of Trust / Reputation Aspects:
 - Regulatory Attention
 - Media Attention
 - Embarrassed Execs
 - Embarrassed Ministers
 - Brand Damage

Benefits of Consultation

- Information Gathering from all relevant perspectives
- Information Exchange among the participants
- Mutual Appreciation of one another's perspectives
- Issue Identification
- Solution Discovery
- Feedback about possible solutions from all participants
- Involvement of all parties
- Avoidance of Credible Complaints at a late stage of lack of disclosure of the project, particular features, and impacts

Why Not?

The Reasons for Organisations Not to Do a PIA

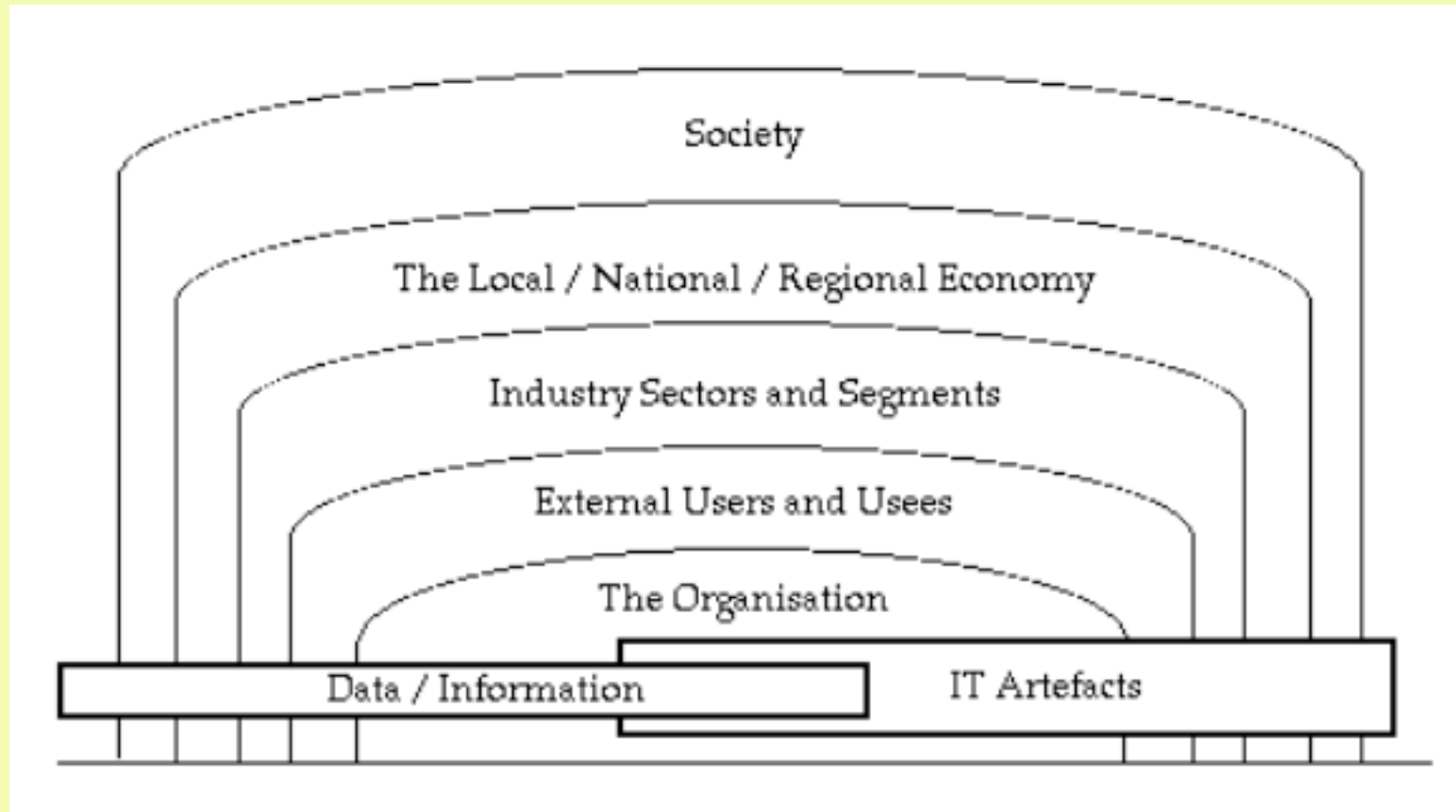
- Cost
- Delay
- Information Disclosure about the Organisation's Activities
- Opportunity for Opponents to achieve countervailing power

Conclusions about PIAs and NatSec

- 3 of the 72 projects (4%) passed every test
- 57 of the 72 projects **(79%) failed every test**
- AGD has continually breached expectations, public policy and arguably the law, but has avoided publicity and suffered no sanctions
- 7 advocacy organisations wrote jointly to the AG in September 2011. No reply was received
- The Parliamentary Joint Committee on Intelligence and Security (PJCIS) is a puppet
- The Privacy Commissioner is a captive
- **PIAs don't operate as a Control Mechanism over Australian National Security Initiatives**



The Contested Semantics of 'Security'



Where and What is 'National Security'?

Abuse of Social Control Architecture

- **By an Unelected Government**
 - That invades
 - That seizes power
- **By an Elected Government**
 - That acts outside the law
 - That arranges the law as it wishes
 - That reflects temporary public hysteria

National Security Cabal as Threat to Democracy

Evaluation Meta-Principles

Pre-Conditions

1. Evaluation
2. Consultation
3. Transparency
4. Justification

Design

5. Proportionality
6. Mitigation
7. Controls

Post-Condition

8. Audit

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Agenda

- The Contested Semantics of 'Security'
- The Concept of 'National Security'
- The Australian Context
- PIAs on Australian 'National Security' Measures
- The Critical Role of Evaluation
- The (Ir)Responsibility of the Executive
- The (Ir)Responsibility of the Legislature