THE SENATE

COMMUNITY AFFAIRS REFERENCES COMMITTEE

Centrelink's compliance program

PUBLIC HEARING

Friday 27 August 2021

Via Teleconference

Committee room 2S2, Parliament House, Canberra

PA-Australian Human Rights Commission

Senator Rachel Siewart (Chair) asked the following questions on 27 August 2021:

CHAIR: Thank you very much for that comprehensive rundown. I've got a few questions and then I'll hand over to my colleagues. You explained very clearly the issues around the need for reasons behind automated decision-making. Do you have specific examples of where that hasn't happened? Have you had complaints about it?

Prof. Croucher: I can't point to any specific examples. I would have to take that on notice to see, in our various areas of complaints, whether any specific complaints about this kind of issue have arisen. There are none that come immediately to mind. I know that in the submissions that were given to the commission in the course of the human rights and technology projects a number of people pointed to the impact of this particular compliance program. But in terms of complaints, apart from specific points made in the consultations, I am unable to answer that question without seeking advice from within the commission.

CHAIR: If you could take that on notice, that would be appreciated. I think it would be helpful.

One of the other points that was made in your submission was the issue around algorithmic bias, particularly as it relates to people who are facing significant disadvantage. Could you explain a little bit further about what that does—how that happens? It's fairly obvious what the bias does. But how is that bias included in the algorithms? Could you explain in a bit more detail how that occurs?

Prof. Croucher: As I understand it—and I think this is explained in the report, so it may be that I come back to you with a specific reference to where algorithmic bias was considered—I recall some of the examples that the Human Rights Commissioner, Ed Santow, used, particularly in the context of, for example, where algorithms were used in making decisions about granting bail. Some of the examples that were given were drawn from the United States, where an algorithm is constructed based on past history or past patterns in its particular context, and the example used was sentencing. The algorithm can generate results that are inappropriate in the context and not calibrated appropriately to the individual. Similarly with another example that he referred to, one that I'm familiar with in my own lifetime, which goes to lending practices. An algorithm might be used to evaluate a loan applicant's standing in being able to repay. Some of the algorithms in the past may have negatively affected women, particularly married women, in relation to a loan application. So there were a couple of illustrations that I recall Mr Santow brought to mind on occasions in talking about algorithmic bias. I know there was some discussion about it in the report, but I would have to pinpoint that for you, Chair, by taking that on notice.

CHAIR: Thank you. Once again, that would be extremely useful.

The response to the honourable senator's question is as follows:

1) *Do you have specific examples of where that hasn't happened? Have you had complaints about it?*

The Australian Human Rights Commission's Investigation and Conciliation Service has conducted a number of searches for Robodebt (and debt) and have not found any complaints. The Commission does not have data on the number of inquiries relating the Centrelink Compliance Program that did not proceed to a complaint.

2) *Could you explain a little bit further about what that does—how that happens? It's fairly obvious what the bias does. But how is that bias included in the algorithms? Could you explain in a bit more detail how that occurs?*

The Australian Human Rights Commission has produced two key documents that may assist the Committee.

a. Australian Human Rights Commission, Human Rights and Technology Final Report (March 2021).

The [Final Report](#) specifically addressed algorithmic bias in Chapter 8 on Artificial Intelligence, Equality and Discrimination. The Final Report noted that the use of AI can assist in identifying and addressing bias or prejudice that can be present in human decision making,[i] but it can also perpetuate or entrench such problems. In a recent review of algorithmic decision making in the recruitment, financial services, policing and local government sectors, the UK Government's Centre for Data Ethics and Innovation concluded:

New forms of decision-making have surfaced numerous examples where algorithms have entrenched or amplified historic biases; or even created new forms of bias or unfairness. Active steps to anticipate risks and measure outcomes are required to avoid this.[ii]

Examples of the problem of algorithmic bias, which in some situations can involve unlawful discrimination, are emerging in decision making in the criminal justice system, advertising, recruitment, healthcare, policing and elsewhere.

Where an algorithm is expressly designed to exclude a particular group, or where it gives extra weight to a protected attribute, such as race, age, or gender, it is likely to disadvantage people by reference to those protected attributes. In these situations, discrimination may be easy to identify.

However, unfairness or discrimination also can be difficult to detect and address. Much will depend on the data used to train an AI-informed decision-making system.[iii] Some refer to data science's 'garbage in, garbage out' problem, where a 'flawed' data set is used to produce decisions that are unreliable, unfair or discriminatory.

Such flaws can arise, and lead to algorithmic bias, for a variety of reasons. Examples include where the AI-informed decision-making system is designed in a way that:

- gives undue weight to a particular data set

- relies on a data set that is incomplete, out of date or incorrect, or

- uses a data set that is affected by selection bias—that is, where the data set is not representative of a population so may ultimately favour one group over another.[iv]

There has been growing attention to the problem that arises where an AI-informed decision-making system is 'trained' on historical data that is affected by prejudice or unlawful discrimination.

For instance, imagine AI is used to make home loan decisions. If the AI-informed decision-making system is trained on many years of human decisions that were prejudiced against female loan applicants—in other words, if the training data contains a historical bias—the system can replicate or even reinforce this bias in its outputs. This historical bias might be 'hidden' in the training data, in the sense that it is difficult to discern the unfair disadvantage. Yet the AI-informed decision-making system will continue to apply this disadvantage to female loan applicants, even if there is no longer any underlying prejudice or other improper motivation in the design of the system.[v]

An oft-cited example is a recruitment tool that favoured male over female candidates. The algorithm was trained to identify patterns in job applications received by the company over a 10-year period. As most of the job applicants were male, the system 'learned' that male applicants were preferable, and generated recommendations for the future workforce accordingly.[vi]

Similarly, profiling individuals through data mining in order to draw inferences about their behaviour carries risks of unfair and discriminatory treatment.[vii] This, too, can lead to unlawful discrimination. The UN Committee on the Elimination of Racial Discrimination recently completed a three-year study on the use of AI in a policing context, identifying a greater risk of racial profiling arising from the use of certain AI methods.[viii]

b. Australian Human Rights Commission, Using artificial intelligence to make decisions: Addressing the problem of algorithmic bias (Technical Paper, November 2020).

This Technical Paper on algorithmic bias was published in partnership with Gradient Institute, Consumer Policy Research Centre, CHOICE and CSIRO's Data61. Using a synthetic data set, the Technical Paper tests how algorithmic bias can arise, using a hypothetical simulation: an electricity retailer using an AI-powered tool to decide how to offer its products to customers, and on what terms.

The simulation identified five forms of algorithmic bias that may arise due to problems attributed to the data set, the use of AI itself, societal inequality, or a combination of these sources.

The Paper investigates how algorithmic bias can arise in each scenario, the nature of any bias, and provides guidance regarding how these problems might be addressed. Specifically, it shows how these problems can be addressed by businesses acquiring more appropriate data, pre-processing the data, increasing the model complexity, modifying the AI system and changing the target variable.

The Paper, the first of its kind in Australia, highlights the importance of multidisciplinary, multi-stakeholder cooperation to produce practical guidance for businesses wishing to use AI in a way that is responsible and complies with human rights.

Senator O'Neill asked the following questions on 27 August 2021:

Senator O'NEILL: Has the government responded to the Human rights and technology report?

Prof. Croucher: I can advise that the commission has briefed hundreds of stakeholders since the launch of the final report. Mr Santow conducted many webinars and face-to-face meetings. In terms of interactions with government, he had a number of specific engagements, which I could run through for you now, if that would be helpful.

Senator O'NEILL: Perhaps you might want to give us a time line of that series of engagements, on notice, if you wouldn't mind. Are you aware of whether the government are going to actually respond to this very important document formally?

Prof. Croucher: I couldn't give you an answer to that. You'd need to ask the government that question. And I have a list of the specific engagements where Mr Santow briefed—offered to brief and did indeed brief—many key government ministers on the report. They extend from March, not long after the report was tabled, through until July. At the end of July Mr Santow's term came to an end, and through the course of that period he briefed at least four ministers on the report.

Senator O'NEILL: Thank you. Anything you can provide on notice with regard to that would be good, and perhaps we should also write to the minister and find out ourselves whether he intends to respond formally to a very important report.

Chapter 5 of the Human rights and technology report recommends that the Australian government introduce legislation to require that a human rights impact assessment be undertaken before any department or agency uses an AI-informed decision-making system to make administrative decisions. To your knowledge, is that legislation being considered by the government?

Prof. Croucher: Again, I could not answer that. That is a question that you would need to put to the government.

Senator O'NEILL: Have you provided any information to the government to enable them to create such legislation, seeing as that was one of the recommendations you advanced?

Prof. Croucher: The report was provided to the minister—and by 'minister' I mean the Attorney-General— and was tabled in parliament. The follow-up engagement over the months thereafter was briefing on the report itself. As to any implementation of the report, that is now completely in the hands of government.

Senator O'NEILL: Okay. So, to be clear, you've not provided any response to any draft legislation or advanced any legislative frames or shapes to the Attorney-General?

Prof. Croucher: The recommendations about legislation are in the report itself, and, apart from that, no.

Senator O'NEILL: Are you aware of any other measures the Morrison government has—

CHAIR: Senator O'Neill, this will have to be your last question—sorry.

Senator O'NEILL: Okay. Then perhaps you could take on notice—I might just sort of fuse a couple—any measures that you're aware of that the government's taken to address the human rights issues that arose with the illegal robodebt scheme, and anything they actually have done to introduce protections against robodebt.

The response to the honourable senator's question is as follows:

1) *Has the government responded to the human rights and technology report?*

    a. Commonwealth Government meetings relating to the Human Rights and Technology Final Report

Name	Date
Senator the Hon Amanda Stoker, Assistant Minister to the Attorney-General, Assistant Minister for Women, Assistant Minister for Industrial Relations.	21 November 2020
Deborah Anton, Interim National Data Commissioner, Office of the National Data Commissioner	2 March 2021
Senator the Hon Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy	4 March 2021
The Hon Stuart Robert MP, in his former capacity as Minister for Government Services and former Minister for the National Disability Insurance Scheme (now Minister for Employment, Workforce, Skills, Small and Family Business).	23 March 2021
Graham Perrett MP, Federal Member for Moreton, Shadow Assistant Minister for Education, Deputy Chair of Parliamentary Joint Committee on Human Rights	19 March 2021
Sandra Roussel , Assistant Secretary, Regulatory Policy, Economic Division, Department of the Prime Minister and Cabinet	24 March 2021
Richard Windeyer, Deputy Secretary, Communications & Media, Department of Infrastructure, Transport, Regional Development and Communications	March 2021
Dr Cathy Foley AO PSM, Australia's Chief Scientist	1 April 2021
Senator the Hon Michaela Cash, Attorney-General, Minister for Industrial Relations, Senator for Western Australia	22 April 2021

Nerida O'Loughlin PSM, Chair & Agency Head, Australian Communications and Media Authority Richard Bullock, Executive Manager, Research Data and Regulation, Australian Communications and Media Authority	20 May 2021
Office of the Hon Mark Dreyfus QC MP Federal Member for Isaacs, Shadow Attorney-General, Shadow Minister for Constitutional Reform	20 May 2021
Michelle Dowdell, Head of the Digital Technology Taskforce at PM&C.	24 May 2021
Angeline Falk, Australian Information and Privacy Commissioner, Office of the Australian Information Commissioner	26 May 2021
Regulators Roundtable: Deborah Anton, Interim National Data Commissioner; Cathie Armour, Commissioner, Australian Securities and Investments Commission; Rina Bruinsma, First Assistant Commissioner, Australian Public Service Commission; Wayne Byres, Chair, Australian Prudential and Regulation Authority; Justice Sarah Derrington, President, Australian Law Reform Commission; Elizabeth Hampton, Deputy Australian Information and Privacy Commissioner; Dr Cathy Foley, Australia's Chief Scientist; Julie Inman Grant, eSafety Commissioner; Michael Manthorpe, Commonwealth Ombudsman; Rod Sims, Chair, Australian Competition and Consumer Commission	29 June 2021
Senator the Hon Linda Reynolds, Minister for Government Services and Minister for the National Disability Insurance Scheme.	5 July 2021
The Hon Ed Husic MP, Federal Member for Chifley, Shadow Minister for Industry and Innovation	6 July 2021
Michelle Hutchinson, Chief of Staff, Office of the Hon Christian Porter MP Kieran Clancy, Senior Adviser, Office of the Hon Christian Porter MP	8 July 2021

b. Written Correspondence to Commonwealth members of parliament relating to the Human Rights and Technology Final Report

Name	Topic	Date
The Hon Christian Porter MP, Attorney-General; Senator the Hon Amanda Stoker, Assistant Minister to the Attorney-General	Transmittal letter for Human Rights and Technology Final Report.	4 March 2021
Senator the Hon Amanda Stoker, Assistant Minister to the Attorney-General, Assistant Minister for Women, Assistant Minister for Industrial Relations	Offering a briefing on Human Rights and Technology Final Report.	20 April 2021
Senator the Hon Marise Payne, Minister for Foreign Affairs, Minister for Women	Offering a briefing on Human Rights and Technology Final Report.	22 April 2021
The Hon Jaala Pulford, Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business	Offering a briefing on Human Rights and Technology Final Report.	27 April 2021
Mr Adam Bandt MP, Member for Melbourne, Leader of the Australian Greens	Offering a briefing on Human Rights and Technology Final Report.	27 April 2021
Senator the Hon Sarah Henderson, Chair of Legal and Constitutional Affairs Legislation Committee, Deputy Chair of Legal and Constitutional Affairs References Committee, Senator for Victoria	Offering a briefing on Human Rights and Technology Final Report.	27 April 2021
Senator James Paterson, Chair of Parliamentary Joint Committee on Intelligence and Security, Deputy Chair of	Offering a briefing on Human Rights and Technology Final Report.	27 April 2021

Select Committee on COVID-19, Senator for Victoria		
The Hon Mark Dreyfus QC, MP, Federal Member for Isaacs, Shadow Attorney-General, Shadow Minister for Constitutional Reform	Offering a briefing on Human Rights and Technology Final Report.	27 April 2021
Senator the Hon Michaelia Cash, Attorney-General, Minister for Industrial Relations, Senator for Western Australia	Offering a briefing on Human Rights and Technology Final Report.	10 May 2021
The Hon Paul Fletcher MP, Member for Bradfield, Minister for Communications, Urban Infrastructure, Cities and the Arts	Offering a briefing on Human Rights and Technology Final Report.	11 May 2021
Senator the Hon Michaelia Cash, Senator for Western Australia, Attorney-General, Minister for Industrial Relations, Deputy Leader of the Government in the Senate	Letter demonstrating National regulatory support for an AI Safety Commissioner, co-signed by the Australian Competition and Consumer Commission (ACCC) and the Australian Prudential Regulation Authority (APRA).	27 July 2021
The Hon Christian Porter MP, Minister for Industry, Science and Technology, Member for Pearce	Offering a briefing on the Human Rights and Technology Final Report.	15 June 2021
Senator the Hon Michaelia Cash, Senator for Western Australia, Attorney-General, Minister for Industrial Relations, Deputy Leader of the Government in the Senate	Offering a briefing on the Human Rights and Technology Final Report.	15 June 2021

The Hon Anthony Albanese MP, Member for Grayndler, Leader of the Opposition	Offering a briefing on the Human Rights and Technology Final Report.	8 June 2021
The Hon Ed Husic MP, Member for Chifley, Shadow Minister for Industry and Innovation	Offering a briefing on the Human Rights and Technology Final Report.	8 June 2021
The Hon Bill Shorten MP, Member for Maribyrnong, Shadow Minister for Government Services, Shadow Minister for the National Disability Insurance Scheme	Offering a briefing on the Human Rights and Technology Final Report.	8 June 2021
Senator Jordon Steele-John, Senator for Western Australia	Offering a briefing on the Human Rights and Technology Final Report.	8 June 2021
Ms Michelle Rowland MP, Member for Greenway, Shadow Minister for Communications	Offering a briefing on the Human Rights and Technology Final Report.	8 June 2021

Webinars

The Final Report was launched with a series of 14 information webinars over June and July 2021. Each webinar targeted a sector or profession, including civil society, legal and compliance, business and government and focused on a key topic such as AI in decision making, or accessible technology. The Commission reached well over 1300 stakeholders via the webinars, and recordings of the webinars are available online for ongoing stakeholder engagement.

2) *Are there any measures that you're aware of that the government's taken to address the human rights issues that arose with the illegal robodebt scheme, and anything they actually have done to introduce protections against Robodebt?*

The Commission notes that there are a number of government measures relating to new technology and human rights. These measures include the Australian Government, *Digital Economy Strategy (previously Digital Australia Strategy*.[ix] The Commission recommends in the Final Report (Recommendation 1) that any national strategy contain effective regulation that upholds human rights in the development and use of new technologies.

The Digital Economy Strategy is a living document, and an excellent opportunity to articulate the key, big-picture elements of how Australia will respond to the rise of new and emerging technologies. This would include accountability measures to help ensure that human rights are protected in the provision of government services.

The Commission makes seven detailed recommendations (Recommendations 2-8) in the Final Report on how the government can use AI and related technologies in a way that complies with human rights and acts accountably when making administrative decisions like the ones in the Centrelink Compliance Program. The Final Report includes other recommendations to improve the accountability of government when using AI, such as the establishment of an AI Safety Commissioner (see Recommendations 22 and 23).

Human Rights and Technology Final Report Recommendations

The Commission encourages the Committee to consider the [Human Rights and Technology Final Report](#) recommendations. The recommendations in the Final Report are informed by the Commission's expertise, our research and extensive public consultation with the community, government, industry and academia.

The Final Report is divided into four parts, all which have relevant recommendations to improving human rights outcomes with regards to government programs such as the Centrelink Compliance Program:

- **Part A:** A national strategy on new and emerging technologies
- **Part B:** The use of artificial intelligence in decision making by government and the private sector
- **Part C:** Supporting effective regulation through the creation of an AI Safety Commissioner
- **Part D:** Accessible technology for people with disability.

PART A: NATIONAL STRATEGY ON NEW AND EMERGING TECHNOLOGIES

Recommendation 1: The *Digital Australia Strategy,* which is currently being developed by the Australian Government Department of the Prime Minister and Cabinet, should set Australia's national strategy for new and emerging technologies. The *Digital Australia Strategy* should promote responsible innovation through:

(a) effective regulation—including law, co-regulation and self-regulation— that upholds human rights in the development and use of new technologies

(b) the development of a community-wide action plan on education, training and capacity building regarding the human rights implications of new and emerging technologies

(c) funding and investment for responsible innovation that complies with human rights

(d) practical measures to achieve the Strategy's aims, including through the establishment of an AI Safety Commissioner (see Recommendation 22).

PART B: ARTIFICIAL INTELLIGENCE

- **Chapter 5: Legal accountability for government use of AI**

Recommendation 2: The Australian Government should introduce legislation to require that a human rights impact assessment (HRIA) be undertaken before any department or agency uses an AI-informed decision-making system to make administrative decisions.

An HRIA should include public consultation, focusing on those most likely to be affected. An HRIA should assess whether the proposed AI-informed decision-making system:

(a) complies with Australia's international human rights law obligations

(b) will involve automating any discretionary element of administrative decisions, including by reference to the Commonwealth Ombudsman's *Automated decision-making better practice guide* and other expert guidance

(c) provides for appropriate review of decisions by human decision makers

(d) is authorised and governed by legislation.

Recommendation 3: The Australian Government should introduce legislation to require that any affected individual is notified where artificial intelligence is materially used in making an administrative decision. That notification should include information regarding how an affected individual can challenge the decision.

Recommendation 4: The Australian Government should commission an audit of all current or proposed use of AI-informed decision making by or on behalf of Government agencies. The AI Safety Commissioner (see Recommendation 22), or another suitable expert body, should conduct this audit.

Recommendation 5: The Australian Government should not make administrative decisions, including through the use of automation or artificial intelligence, if the decision maker cannot generate reasons or a technical explanation for an affected person.

Recommendation 6: The Australian Government should make clear that, where a person has a legal entitlement to reasons for a decision, this entitlement exists regardless of how the decision is made. To this end, relevant legislation including s 25D of the *Acts Interpretation Act 1901* (Cth) should be amended to provide that:

> (a) for the avoidance of doubt, the term 'decision' includes decisions made using automation and other forms of artificial intelligence

> (b) where a person has a right to reasons the person is entitled also to a technical explanation of the decision, in a form that could be assessed and validated by a person with relevant technical expertise

> (c) the decision maker must provide this technical explanation to the person within a reasonable time following any valid request.

Recommendation 7: The Australian Government should engage a suitable expert body, such as the AI Safety Commissioner (see Recommendation 22), to develop guidance for government and non-government bodies on how to generate reasons, including a technical explanation, for AI-informed decisions.

Recommendation 8: The Australian Government should introduce legislation to create or ensure a right to merits review, generally before an independent tribunal such as the Administrative Appeals Tribunal, for any AI-informed administrative decision.

- **Chapter 6: Legal accountability for private sector use of AI**

Recommendation 9: The Australian Government's *AI Ethics Principles* should be used to encourage corporations and other non-government bodies to undertake a human rights impact assessment before using an AI-informed decision-making system. The Government should engage the AI Safety Commissioner (Recommendation 22) to issue guidance for the private sector on how to undertake human rights impact assessments.

Recommendation 10: The Australian Government should introduce legislation to require that any affected individual is notified when a corporation or other legal person materially uses AI in a decision-making process that affects the legal, or similarly significant, rights of the individual.

Recommendation 11: The Australian Government should introduce legislation that provides a rebuttable presumption that, where a corporation or other legal person is responsible for making a decision, that legal person is legally liable for the decision regardless of how it is made, including where the decision is automated or is made using artificial intelligence.

Recommendation 12: Centres of expertise, including the newly established Australian Research Council Centre of Excellence for Automated Decision-Making and Society, should prioritise research on the 'explainability' of AI-informed decision making.

Recommendation 13: The Australian Government should introduce legislation to provide that where a court, or regulatory, oversight or dispute resolution body, has power to order the production of information or other material from a corporation or other legal person:

> (a) for the avoidance of doubt, the person must comply with this order even where the person uses a form of technology, such as artificial intelligence, that makes it difficult to comply with the order

> (b) if the person fails to comply with the order because of the technology the person uses, the body may draw an adverse inference about the decision-making process or other related matters.

- **Chapter 7: Encouraging better AI-informed decision making**

Recommendation 14: The Australian Government should convene a multi-disciplinary taskforce on AI-informed decision making, led by an independent body, such as the AI Safety Commissioner (Recommendation 22). The taskforce should:

> (a) promote the use of human rights by design in this area

> (b) advise on the development and use of voluntary standards and certification schemes

> (c) advise on the development of one or more regulatory sandboxes focused on upholding human rights in the use of AI-informed decision making.

The taskforce should consult widely in the public and private sectors, including with those whose human rights are likely to be significantly affected by AI-informed decision making.

Recommendation 15: The Australian Government should appoint an independent body, such as the AI Safety Commissioner (Recommendation 22), to develop a tool to assist private sector bodies undertake human rights impact assessments (HRIAs) in developing AI-informed decision-making systems. The Australian Government should maintain a public register of completed HRIAs.

Recommendation 16: The Australian Government should adopt a human rights approach to procurement of products and services that use artificial intelligence. The Department of Finance, in consultation with the Digital Transformation Agency and other key decision makers and stakeholders, should amend current procurement law, policy and guidance to require that human rights are protected in the design and development of any AI-informed decision-making tool procured by the Australian Government.

Recommendation 17: The Australian Government should engage an expert body, such as the AI Safety Commissioner (Recommendation 22), to issue guidance to the private sector on good practice regarding human review, oversight and monitoring of AI-informed decision-making systems. This body should also advise the Government on ways to incentivise such good practice through the use of voluntary standards, certification schemes and government procurement rules.

- **Chapter 8: AI, equality and non-discrimination**

Recommendation 18: The Australian Government should resource the Australian Human Rights Commission to produce guidelines for government and non-government bodies on complying with federal anti-discrimination laws in the use of AI-informed decision making.

Chapter 9: Biometric surveillance, facial recognition and privacy

Recommendation 19: Australia's federal, state and territory governments should introduce legislation that regulates the use of facial recognition and other biometric technology. The legislation should:

> (a) expressly protect human rights

> (b) apply to the use of this technology in decision making that has a legal, or similarly significant, effect for individuals, or where there is a high risk to human rights, such as in policing and law enforcement

> (c) be developed through in-depth consultation with the community, industry and expert bodies such as the Australian Human Rights Commission and the Office of the Australian Information Commissioner.

Recommendation 20: Until the legislation recommended in Recommendation 19 comes into effect, Australia's federal, state and territory governments should introduce a moratorium on the use of facial recognition and other biometric technology in decision making that has a legal, or similarly significant, effect for individuals, or where there is a high risk to human rights, such as in policing and law enforcement.

Recommendation 21: The Australian Government should introduce a statutory cause of action for serious invasion of privacy.

PART C: SUPPORTING EFFECTIVE REGULATION

Recommendation 22: The Australian Government should establish an AI Safety Commissioner as an independent statutory office, focused on promoting safety and protecting human rights in the development and use of AI in Australia. The AI Safety Commissioner should:

> (a) work with regulators to build their technical capacity regarding the development and use of AI in areas for which those regulators have responsibility

(b) monitor and investigate developments and trends in the use of AI, especially in areas of particular human rights risk

(c) provide independent expertise relating to AI and human rights for Australian policy makers

(d) issue guidance to government and the private sector on how to comply with laws and ethical requirements in the use of AI.

Recommendation 23: The AI Safety Commissioner (see Recommendation 22) should:

(a) be independent from government in its structure, operations and legislative mandate, but may be incorporated into an existing body or be formed as a new, separate body

(b) be adequately resourced, wholly or primarily by the Australian Government

(c) be required to have regard to the impact of the development and use of AI on vulnerable and marginalised people in Australia

(d) draw on diverse expertise and perspectives including by convening an AI advisory council.

PART D: ACCESSIBLE TECHNOLOGY

- **Chapter 12: Functional accessibility**

Recommendation 24: The Attorney-General should:

(a) develop a Digital Communication Technology Standard under section 31 of the *Disability Discrimination Act 1992* (Cth), and

(b) consider other law and policy reform to implement the full range of accessibility obligations regarding Digital Communication Technologies under the *Convention on the Rights of Persons with Disabilities.*

In doing so, the Attorney-General should consult widely, especially with people with disability and the technology sector.

Recommendation 25: The Australian Government and state, territory and local governments should commit to using Digital Communication Technology that fully complies with recognised accessibility standards—especially WCAG 2.1 and Australian Standard EN 301 549, and successor standards. To this end, all Australian governments should:

> (a) introduce whole-of-government requirements for compliance with these standards, including by:
>
>> 1   providing information that is publicly available about how each agency complies with these requirements, reported annually
>>
>> 2   establishing central line agency and ministerial responsibility for monitoring compliance across government
>>
>> 3   resourcing training and advisory support to assist compliance
>
> (b) promote accessible goods, services and facilities that use Digital Communication Technology by favouring procurement from entities that implement such accessibility standards in their own activities
>
> (c) develop policies and targets to increase the availability of government communications in Easy English and provide human customer supports for people with disability who need to communicate with people instead of accessing digital services.

Recommendation 26: The Australian Government Department of Industry, Science, Energy and Resources or the Digital Transformation Agency should conduct an inquiry into compliance by industry with accessibility standards such as WCAG 2.1 and Australian Standard EN 301 549.

The inquiry should consider the extent to which incentives for compliance with standards should include changes relating to taxation, grants and procurement, research and design, and the promotion of good practices by industry.

- **Chapter 13: Broadcasting and audio-visual services**

Recommendation 27: The Australian Government should amend the *Broadcasting Services Act 1992* (Cth) to increase the amount of accessible content available for people who have hearing or vision difficulties as follows:

(a) national and commercial free-to-air television services should be required to provide audio described content for a minimum of 14 hours of programming per week, distributed across the primary and secondary channels. This should be increased to a minimum of 21 hours per week in a timeframe to be determined in consultation with people with disability and broadcasting services.

(b) subscription television services should be required to provide audio described content for a minimum of 14 hours of programming per week for their main channels. This should be increased to a minimum of 21 hours per week in a timeframe to be determined in consultation with people with disability and broadcasting services.

(c) national and commercial television free-to-air services should be required to increase the captioning of their content on an annual basis, resulting in all such broadcasting being captioned on primary and secondary channels within five years. The Government should determine a formula for annual progressive increases of captioning in consultation with industry, people with disability and their representatives.

Recommendation 28: The Australian Government Department of Infrastructure, Transport, Regional Development and Communications should conduct a review to identify effective, practical ways to increase audio description and captioning on secondary or specialist broadcast television channels.

Recommendation 29: The Australian Government should introduce legislation to provide minimum requirements for audio description and captioning in respect of audio-visual content delivered through subscription video-on-demand, social media and other services that are not covered by the *Broadcasting Services Act 1992* (Cth). Obligations should be determined in consultation with industry, and people with disability and their representatives.

Recommendation 30: The Australian Government, and state and territory governments, should ensure that people with disability can receive and understand emergency and other important public announcements, including by requiring government agencies to provide Auslan interpreters at their emergency and important public announcements.

The Australian Government should amend the *Broadcasting Services Act 1992* (Cth) to require any television or other company, which broadcasts or re-broadcasts emergency and other important public announcements, to ensure that Auslan interpretation is visible on the screen at all relevant times; and captions are readable, accurate and comprehensible.

Recommendation 31: The Australian Communications and Media Authority should consult with broadcasters and introduce monitoring and compliance measures to support them to:

> (a) comply with accessible service requirements

> (b) provide quality accessible services

> (c) increase organisational capacity to comply with current and future accessible service obligations.

- **Chapter 14: Availability of new technology**

Recommendation 32: Standards Australia should develop, in consultation with people with disability and other stakeholders, an Australian Standard or Technical Specification that covers the provision of accessible information, instructional and training materials to accompany consumer goods, services and facilities.

This Australian Standard or Technical Specification should inform the development of the recommended Digital Communication Technology Disability Standard under section 31 of the *Disability Discrimination Act 1992* (Cth) (see Recommendation 24).

Recommendation 33: The NBN Co should implement a reasonable concessional broadband rate for people with disability who are financially vulnerable, in consultation with them, their representatives and other stakeholders.

Recommendation 34: The National Disability Insurance Agency, in consultation with people with disability, should review its policies regarding funding of reasonable and necessary supports as those policies apply to accessible goods, services and facilities, which use Digital Communication Technologies and which can be shown to enable people with disability to enjoy greater independence and participation in all areas of life.

In particular, the NDIA should focus on increasing access to internet plans, computers, tablets, laptops and smartphones and other items that rely on Digital Communication Technologies.

- **Chapter 15: Design, education and capacity building**

Recommendation 35: The Disability Reform Council, through the Disability Reform Ministers' Meeting, should:

> (a) include accessible technology as an outcome area in the next National Disability Strategy to improve access to Digital Communication Technologies for people with disability

> (b) lead a process for the Australian Government and state and territory governments to adopt and promote human rights by design in the development and delivery of government services using Digital Communication Technologies, and monitor progress in achieving this aim.

Recommendation 36: Providers of tertiary and vocational education should include the principles of human rights by design in relevant degree and other courses in science, technology, engineering and mathematics. The Australian Government should engage the Australian Council of Learned Academies to provide advice on how to achieve this aim most effectively within the tertiary and vocational sectors.

Recommendation 37: Professional accreditation bodies for science, technology, engineering and mathematics should introduce mandatory training on human rights by design as part of continuing professional development.

Recommendation 38: The Australian Government should commission an expert body to lead the national development and delivery of education, training, accreditation, and capacity building for accessible technology for people with disability.

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[i] This point was noted in IP submissions: Adobe, 2; University of Technology Sydney, 31, 43, 44; N Suzor, K Weatherall, A Daly, A Vromen, M Mann,18; University of Melbourne, 9; Law Council of Australia, 14. DP submissions: Victorian Legal Aid, 3; AI Now Institute, 4; Microsoft, 4; E Wylynko,1.

[ii] United Kingdom Centre for Data Ethics and Innovation, Review into Bias in Algorithmic Decision-making (27 November 2020) 3.

[iii] Russell and Norvig note 'Throughout the 60-year history of computer science, the emphasis has been on the algorithm as the main subject of study. But some recent work in AI suggests that for many problems, it makes more sense to worry about the data and be less picky about what algorithm to apply. This is true because of the increasing availability of very large data sources': Stuart Russell and Peter Norvig, Artificial Intelligence: A

Modern Approach (Pearson, 3rd ed, 2016) 27; IP submissions: Webkey IT, 4; University of Technology Sydney, 43, 44; Office of the Australian Information Commissioner, 7; PwC Indigenous Consulting, 32-33; Northraine, 6.

iv Executive Office of the President of the United States, Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights (May 2016) 7. See IP submissions: Adobe, 2; University of Technology Sydney, 44; N Suzor, K Weatherall, A Daly, A Vromen, M Mann, 18; Intopia, 7; University of Melbourne, 8; LexisNexis, 16, 17; Office of the Australian Information Commissioner; University of Melbourne, 8.

v The European Union Agency for Fundamental Rights, for example, stated in its 2018 report on big data, that if algorithms are fed biased data 'discrimination will be replicated, perpetuated and potentially even reinforced', see European Union Agency for Fundamental Rights, #BigData: Discrimination in Data-supported Decision Making (30 May 2018) 10. This point has also been recognised by the UK House of Lords Select Committee on AI: Select Committee on Artificial Intelligence, House of Lords, AI in the UK: Ready, Willing and Able? (Report No HL 100 of Session 2017-19, 16 April 2018) 5; Stuart Russell and Peter Norvig, Artificial Intelligence: A Modern Approach (Pearson, 3rd ed, 2016) 495; Executive Office of the President of the United States, Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights (May 2016) 8.

vi Jeffrey Dastin, 'Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women,' Reuters (online, 11 October 2018) <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>.

vii Matthias Leese, 'The New Profiling: Algorithms, Black Boxes, and the Failure of Anti-discriminatory Safeguards in the European Union' (2014) 45(5) Security Dialogue 494.

viii UN Committee on the Elimination of Racial Discrimination, General Recommendation No 36: Preventing and Combating Racial Profiling by Law Enforcement Officials, CERD/C/GC/36 (24 November 2020) [31].

ix Australian Government, Department of Prime Minister and Cabinet, Digital Technology Taskforce <https://www.pmc.gov.au/digital-technology-taskforce>.