



**The Australian Industry Group**  
51 Walker Street  
North Sydney NSW 2060  
PO Box 289  
North Sydney NSW 2059  
Australia  
ABN 76 369 958 788

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Mr Edward Santow  
Human Rights Commissioner  
Human Rights and Technology Project  
Australian Human Rights Commission

Email: [tech@humanrights.gov.au](mailto:tech@humanrights.gov.au)

Dear Mr Santow

## **AUSTRALIAN HUMAN RIGHTS COMMISSION DISCUSSION PAPER ON HUMAN RIGHTS AND TECHNOLOGY**

The Australian Industry Group (AI Group) welcomes the opportunity to make a submission on the Human Rights and Technology Project Discussion Paper by the Australian Human Rights Commission (AHRC). This follows on from our previous submission to the AHRC's consultation on its joint White Paper with the World Economic Forum (WEF) about Artificial Intelligence (AI) governance and leadership in March last year.

### **1. Introduction**

AI Group's membership comes from a broad range of industries and includes businesses of all sizes. As we previously highlighted, the rapid advance of technologies including AI are driving innovation and wider change across the economy, impacting businesses and individuals. AI Group's members are grappling with these changes in different ways and with different levels of readiness and capability. The collective impact of these changes is part of the Fourth Industrial Revolution. We are therefore particularly focussed on the implications for the broader cross-section of Australian businesses and community.

We appreciate the work undertaken by the AHRC to develop this Discussion Paper and the human rights issues raised with respect to AI, and other new and emerging technologies. In this regard, the AHRC has a key role to help contribute to closing the social digital divide arising from the use of these technologies, and we believe there is common interest from industry and broader community to address this.

We would welcome the opportunity to work closely with the AHRC and other stakeholders on these matters. We consider this would be best achieved through greater collaboration with a diverse range of stakeholders. This will ensure a more practicable outcome where the issues are properly identified and addressed, while ensuring that the benefit of new and emerging technologies are maximised by businesses and the broader community.

We note that the AHRC recommends a number of proposals that are of legislative or regulatory in nature. Generally, we would be concerned if legislation or regulation is proposed where a non-legislative/regulatory response could similarly address the issue, without creating unnecessary regulatory red tape or burden on industry.

As we raised in our previous submission to the AHRC, at this early stage of Australia's involvement in AI, positive measures from Government are critical. Australia is not a leader in AI, where it is still behind its peers overseas in terms of AI investment – more can be done to make us globally competitive, with Government support. Regulation is an important area that could make or break the growth of an industry at its early stages of development. The extent to which AI is regulated can act as an investment barrier and diminish our attractiveness relative to other jurisdictions. We are not suggesting that there should be free rein for rogue AI operators, but there should be careful consideration of any new forms of regulation against global best practice approaches and the extent of AI industry support overseas. A similar argument could be extended to other new and emerging technologies as well.



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For the purposes of this consultation, our submission focuses on the AHRC's proposals that cover issues that we have previously raised in our responses to other consultations relating to AI, and other new and emerging technologies. These are discussed further below.

## 2. National strategy and reviews on new and emerging technologies

*AHRC Proposal 1: The Australian Government should develop a National Strategy on New and Emerging Technologies. This National Strategy should: (a) set the national aim of promoting responsible innovation and protecting human rights; (b) prioritise and resource national leadership on AI; (c) promote effective regulation—this includes law, co-regulation and self-regulation; and (d) resource education and training for government, industry and civil society.*

*AHRC Proposal 2: The Australian Government should commission an appropriate independent body to inquire into ethical frameworks for new and emerging technologies to: (a) assess the efficacy of existing ethical frameworks in protecting and promoting human rights; and (b) identify opportunities to improve the operation of ethical frameworks, such as through consolidation or harmonisation of similar frameworks, and by giving special legal status to ethical frameworks that meet certain criteria.*

*AHRC Proposal 3: The Australian Government should engage the Australian Law Reform Commission to conduct an inquiry into the accountability of AI-informed decision making. The proposed inquiry should consider reform or other change needed to: (a) protect the principle of legality and the rule of law; and (b) promote human rights such as equality or non-discrimination.*

*AHRC Proposal 13: The Australian Government should establish a taskforce to develop the concept of 'human rights by design' in the context of AI-informed decision making and examine how best to implement this in Australia. A voluntary, or legally enforceable, certification scheme should be considered. The taskforce should facilitate the coordination of public and private initiatives in this area and consult widely, including with those whose human rights are likely to be significantly affected by AI-informed decision making.*

*AHRC Proposal 17: The Australian Government should conduct a comprehensive review, overseen by a new or existing body, in order to: (a) identify the use of AI in decision making by the Australian Government, (b) undertake a cost-benefit analysis of the use of AI, with specific reference to the protection of human rights and ensuring accountability; (c) outline the process by which the Australian Government decides to adopt a decision-making system that uses AI, including any human rights impact assessments; (d) identify whether and how those impacted by a decision are informed of the use of AI in that decision-making process, including by engaging in public consultation that focuses on those most likely to be affected; and (e) examine any monitoring and evaluation frameworks for the use of AI in decision-making.*

We consider that the AHRC's proposal for a national strategy on new and emerging technologies (Proposal 1) are interrelated with its proposal for reviews on various aspects of these technologies including AI (Proposals 2, 3, 13 and 17). They have been considered together in this section.

As stated in our previous submission to the AHRC, Government has a leadership role to set a vision for the nation, ensure that public policy is conducive to digital investment and competition that benefits industry and the community in the long term, and allay business and individuals' fears of "Digital Darwinism" including AI by preparing the community to prosper in an increasingly technology-driven era. To support this, we welcome the Government's release of an AI Roadmap in November last year, which was developed by CSIRO's Data61.

Notwithstanding this, we have observed a growing trend of multiple concurrent consultations by different Government agencies, which appear to be addressing similar or overlapping issues, albeit with different objectives. While we appreciate diversity of perspectives, we are concerned about the potential for fragmented and conflicting regulation or legislation that could arise in absence of proper coordination between these multiple bodies. We therefore support a need for improved coordination between the various agencies around policy issues that arise from new and emerging technologies.



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A national approach or strategy for new and emerging technologies, such as the one proposed by the AHRC's Proposal 1, could be an option. This should be framed around a vision for the nation, and consideration could also be given to integrating other strategies such as the revised National Digital Economy Strategy (released at the end of 2018), and the revised National Cyber Security Strategy (currently under review). For this national strategy to be successful, there will need to be proper consultation to develop workable solutions, taking into account relevant input from a diverse range of stakeholders.

With respect to the AHRC's Proposals 2, 3, 13 and 17, we suggest that it would be more prudent to consider these proposed multiple reviews as part of developing a national strategy (AHRC's Proposal 1).

***AI Group recommendation: With respect to the AHRC's Proposal 1, we support consideration of a national strategy for new and emerging technologies, having regard to existing strategies. Development of this strategy may lead to consideration of relevant review items, including the AHRC's Proposals 2, 3, 13 and 17.***

### 3. AI Safety Commissioner

***AHRC Proposal 19: The Australian Government should establish an AI Safety Commissioner as an independent statutory office to take a national leadership role in the development and use of AI in Australia. The proposed AI Safety Commissioner should focus on preventing individual and community harm, and protecting and promoting human rights. The proposed AI Safety Commissioner should: (a) build the capacity of existing regulators and others regarding the development and use of AI; (b) monitor the use of AI, and be a source of policy expertise in this area; (c) be independent in its structure, operations and legislative mandate; (d) be adequately resourced, wholly or primarily by the Australian Government; (e) draw on diverse expertise and perspectives; and (f) determine issues of immediate concern that should form priorities and shape its own work.***

We understand that the AHRC's Proposal 19 for an AI Safety Commissioner has been modelled on the eSafety Commissioner, but focused on AI. As we previously raised in our submission to the AHRC, we cautioned against creating new functions and powers that are already addressed through existing bodies to tackle AI.<sup>1</sup> Instead, we suggested there should be more collaboration or integration of work between the relevant bodies on AI. This collaboration can lead to greater access to a wider range of relevant stakeholders on various issues in the areas of standards, education and training, cyber security and privacy, and innovation.

We also suggested that if existing functions or powers proposed are not currently covered, and do serve a clearly articulated purpose, consideration could be given to a new body. Establishment of a new body should be assessed against appropriate criteria such as: long term community cost-benefit analysis; impact on global competitiveness; proportionality of response; and impacts on investment incentives or barriers for business.

Alternatively, we offered a possible configuration of a body that can explore fundamental questions and issues around AI to inform either the work of existing bodies or the development of a new regulatory response. This could cover a range of possible concerns with AI, not limited to a human rights dimension e.g. economic disruption and resulting social impact, existential threats and transhumanism.

We suggest that it would also be more prudent to review the AHRC's Proposal 19 for a new body, as well as other options, as part of a national strategy (AHRC's Proposal 1).

<sup>1</sup> These various existing bodies include the ACCC, AHRC, Data61, Fair Work Commission, IEEE, Office of the Australian Information Commission (OAIC), Standards Australia, Industry Growth Centres, Cooperative Research Centres, and government bodies procuring AI-related projects such as the Digital Transformation Agency (DTA).



***AI Group recommendation: With respect to the AHRC's Proposal 19, the necessity for an AI Safety Commissioner should be considered as a potential review item within a national strategy for new and emerging technologies.***

#### **4. Statutory cause of action for serious invasion of privacy**

***AHRC Proposal 4: The Australian Government should introduce a statutory cause of action for serious invasion of privacy.***

We note that the AHRC's Proposal 4 is in line with the ACCC's Digital Platforms Inquiry Final Report Recommendation 19 for a statutory tort for serious invasions of privacy. In our submission to this inquiry, we highlighted a number of concerns about this recommendation, which we would like to bring to the AHRC's attention:

*The ACCC's recommendation 16(e) on introducing direct rights of action for individuals and recommendation 19 on statutory tort for serious invasions of privacy are closely related so these are discussed together in this section. The ACCC suggests that recommendation 16(e) will empower consumers and give them greater control over their personal information by giving them another avenue for redress, and will incentivise APP entities to comply with the Privacy Act. For recommendation 19, the ACCC suggests that the new cause of action relating to statutory tort for serious invasions of privacy will lessen the bargaining power imbalance for consumers, address existing gaps in the privacy framework and increase the deterrence effect on businesses.*

*While it is important for consumers to have access to an avenue to seek redress for breaches of the Privacy Act, caution needs to be taken when considering creating any new forum or cause of action.*

*Firstly, we consider that the forum with the appropriate expertise lies with the OAIC to assess breaches relating to privacy and act on an affected individual's behalf. If there are concerns that the OAIC has insufficient resources to undertake its responsibilities or expeditiously resolve matters, a more appropriate response would be to increase the OAIC's resources.*

*Secondly, creating another avenue and action for redress through the courts may create other problems, including shifting the administrative burden from the OAIC to the courts, duplicating the OAIC's function, and potentially opening up the flood gates to a litigious culture. Such an outcome would be an administratively inefficient use of public resources.*

*Finally, there may be a false economy created for the consumer in seeking legal action through the courts. There will be legal costs for consumers and businesses in using this avenue which needs to be accounted for.*

***AI Group recommendation to Government: Before deciding whether to proceed with ACCC recommendations 16(e) and 19, further work will be required to properly assess whether there are material consumer benefits with these recommendations. A proper assessment of options will also be required, including cost-benefit assessment.***

***AI Group recommendation: With respect to the AHRC's Proposal 4, further work will be required to properly assess whether there are material consumer benefits with any proposal to introduce a statutory cause of action for serious invasion of privacy. A proper assessment of options will also be required, including cost-benefit assessment.***



## 5. Transparency and explainability in AI

*AHRC Proposal 5: The Australian Government should introduce legislation to require that an individual is informed where AI is materially used in a decision that has a legal, or similarly significant, effect on the individual's rights.*

*AHRC Proposal 7: The Australian Government should introduce legislation regarding the explainability of AI-informed decision making. This legislation should make clear that, if an individual would have been entitled to an explanation of the decision were it not made using AI, the individual should be able to demand: (a) a non-technical explanation of the AI-informed decision, which would be comprehensible by a lay person; and (b) a technical explanation of the AI-informed decision that can be assessed and validated by a person with relevant technical expertise.*

*AHRC Proposal 8: Where an AI-informed decision-making system does not produce reasonable explanations for its decisions, that system should not be deployed in any context where decisions could infringe the human rights of individuals.*

*AHRC Proposal 9: Centres of expertise, including the newly established Australian Research Council Centre of Excellence for Automated Decision-Making and Society, should prioritise research on how to design AI-informed decision-making systems to provide a reasonable explanation to individuals.*

The AHRC's Proposals 5, 7, 8 and 9 appear to relate to the principle of transparency and explainability, which was covered in Draft Principle 6 of the Government's AI Ethics Framework Discussion Paper (and subsequently included in the Government's final AI Ethics Framework).<sup>2</sup> In this regard, we would like to bring to the AHRC's attention comments that we previously received from members about this Draft Principle, which may be relevant to the AHRC's Proposals.

A key point with this principle is that applying concepts of transparency and explainability for AI is complicated – therefore prescribing it in legislation, as proposed by the AHRC, will not simplify their complexity. In particular, more work is required to address the following issues:

- *With respect to the formulation of this principle, it would be good to clarify what it means for an algorithm to impact someone such that it would trigger a requirement for disclosure. While this may be desirable for decisions that have a substantial impact on an individual (e.g. related to health and finance), in many everyday cases (e.g. automatic adjustments on their camera phone exposure), it may be extraneous to the user whether an algorithm has been used or not.*
- *What do we want to know? The details of the algorithm? The details of the dataset? The requirements to which it was designed? How it is used within a larger system? We have examples from around the world where such an idea has been legislated with good intent (GDPR, New York City) but has been effectively impossible to comply with.*
- *In many cases, using current techniques, we may be unable to produce a satisfactory explanation at all, the explanation could divulge IP, or using a directly interpretable method in the first place may significantly increase the error rate, leading to suboptimal outcomes on average.*
- *Trust can be established in many ways, and explanations are only one. For example, one could imagine a government standard self-driving car "test gauntlet" with a series of scenarios and expected performance outcomes. It obviously would not have complete coverage (impossible), but may establish a basic level of AI competence through test alone, similar to how we qualify pilots. All this is currently possible without having algorithmic explainability in terms of human concepts. Even so-called "black boxes" can be probed and tested. Taking a balanced view, where possible we should strive for more interpretability and regulation could and should spur innovation in this area. It is absolutely necessary for explainable AI techniques to be encouraged, developed and widely utilised.*

<sup>2</sup> The Government's AI Ethics Framework Discussion Paper was released in April 2019 which included Draft Principles. Subsequent to this, the Government released its final AI Ethics Framework, including Principles in November 2019.

- *This aspect should be considered much more carefully than it has been in the Department's AI Ethics Framework Discussion Paper. We do not understand how people make particular decisions and sometimes why they behave in the way they do. Having access to information about brain activity may not be useful for assessment of human behaviour in relation to ethics. Perhaps we should not attempt this with AI and treat it as a black box as we do with humans. What is crucial here is to define the behaviours we expect from AI and AI-human interaction and certify them independent of how these are implemented.*

**AI Group recommendation: With respect to the AHRC's Proposals 5, 7, 8 and 9, further work will be required to properly address complex issues that arise when applying the AI ethics principle of transparency and explainability.**

## 6. Accountability in AI

**AHRC Proposal 10: The Australian Government should introduce legislation that creates a rebuttable presumption that the legal person who deploys an AI-informed decision-making system is liable for the use of the system.**

The AHRC's Proposal 10 relates to the principle of accountability, which is similar to Draft Principle 8 in the Government's AI Ethics Framework Discussion Paper (and subsequently included in the Government's final AI Ethics Framework). A concern that members raised in relation to this Draft Principle was a need to attribute accountability on the deployer rather than developer:

- *This principle may not be realistic as currently worded. The current drafting suggests any person or organisation involved in the creation of an open source model or API that ends up being used by unrelated parties in an AI system should be identifiable and accountable for the impacts, even if they were unintended. However, there is no way they would be able to predict or even find out all the ways in which models they had created were being used if they had been given away open source. While they can take steps to be responsible (e.g. provide guidance on how the model was created or target uses, and warnings of things they can imagine it would not be good for), it is not something within an open source creator's control or even visibility.*
- *This principle should focus on people using and deploying AI rather than a developer. A scientist developing a new type of neural network should not be liable for how other people use it. Nor should a knife manufacturer be liable for death by stabbing with a knife. This concerns the law more than the ethics as it has many challenges.<sup>3</sup> As well as accountability, there should be humans either in or on the loop for decisions which may result in humans being negatively impacted, or at other key points that may require review prior to decisive action.*

In this regard, we note that the AHRC's Proposal focusses on the person who deploys the AI-informed decision-making system. However, it is not clear as to the type of liability that is being referred to in its Proposal. This raises another principle on "Do no harm" that was discussed in the Government's AI Ethics Framework Discussion Paper, with members raising the following issues concerning this Draft Principle:<sup>4</sup>

- *This should, perhaps, refer to the people deploying the AI rather than the AI itself. Considering AI as a "tool" vs "agent" has a bearing on this and this brings challenges. It is also not clear how to measure and enforce this.*

<sup>3</sup> S Chopra and LF White, *A Legal Theory for Autonomous Artificial Agents* (The University of Michigan Press, 2014).

<sup>4</sup> The Government's AI Ethics Framework Discussion Paper included Draft Principle 2 which was about "Do no harm". In its final AI Ethics Framework, Draft Principle 2 appeared to be merged with Draft Principle 1 ("Generates net-benefits") and replaced with the Principles "Human, social and environmental wellbeing" and "Human-centred values".



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- *Similar to "benefits", harm is almost impossible to define. "Harm" can be in the eye of the beholder, or the harmed. And when minimising "any negative outcomes", what is the obligation on developers to disclose their decision-process for mitigating or minimising negatives, or even that the negatives exist? Is a disclaimer required such as for pharmaceutical companies advertising in the US?*

The AHRC's Proposal highlights challenges to measuring and defining the types of liabilities that are being targeted, which require further consideration.

***AI Group recommendation: With respect to the AHRC's Proposal 10, further work will be required to properly determine the types of liabilities that are being targeted, and how they would be measured.***

## 7. Standards for AI and Digital Technologies

***AHRC Proposal 12: Any standards applicable in Australia relating to AI-informed decision making should incorporate guidance on human rights compliance***

***AHRC Proposal 23: Standards Australia should develop an Australian Standard or Technical Specification that covers the provision of accessible information, instructional and training materials to accompany consumer goods, in consultation with people with disability and other interested parties.***

***AHRC Proposal 29: The Attorney-General of Australia should develop a Digital Communication Technology Standard under section 31 of the Disability Discrimination Act 1992 (Cth). In developing this new Standard, the Attorney-General should consult widely, especially with people with disability and the technology sector. The proposed Standard should apply to the provision of publicly available goods, services and facilities that are primarily used for communication, including those that employ Digital Technologies such as information communication technology, virtual reality and augmented reality.***

The AHRC makes several proposals relating to standards for human rights in AI and other technologies – in particular Proposals 12, 23 and 29. We consider standards to be an appropriate avenue for addressing a number of issues raised with respect to AI and other technologies.

In this regard, Standards Australia has just released in March its AI standards roadmap, which includes recommendations aimed to help Australia effectively support AI and its future across the globe.<sup>5</sup> Various stakeholders have contributed to the development of this roadmap, including AI Group and the AHRC. We welcome initiatives such as this, as it brings together a diverse range of stakeholders to share their ideas and has the potential to help address issues such as those raised by the AHRC.

As stated in our previous submission to Standards Australia's consultation on developing standards for AI, standards are as relevant to AI as any other product or item used by Australians. There should be a national focus in standards on AI through Standards Australia. Standards Australia can also provide a gateway to international involvement (including ISO/IEC) and it is the most logical pathway to it. Finally, standards can play a role in multiple areas including technical, management and governance.

More broadly, standards are fundamental to promoting digitalisation because they can enable an ecosystem for technological innovation, competition, international trade and interoperability. Standards, when called up by regulation, offer a mechanism to quickly respond to changing markets. Australia's regulatory and standards framework needs to be sufficiently flexible to accommodate rapid changes in technologies that lead to new types of business models and competition, while also protecting consumers' interests.

<sup>5</sup> Standards Australia, *Standards Australia sets priorities for Artificial Intelligence* (Media Statement, March 2020); Standards Australia, *Artificial Intelligence Standards Roadmap: Making Australia's Voice Heard* (Report, March 2020).



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Much global standards work seeks to address broad systems approaches to significant challenges, including AI, as well as other related topics such as smart factories, smart grids, smart cities, digital platforms, Internet of Things and Industry 4.0. These challenges require a new level of coordination and effort, and development of new ways to exchange knowledge between the public and private sectors, academia, standards and conformity institutions.

It is vital that Australian industry and consumers have support and access to all international fora involved in standards development to ensure our national interests are preserved. This will allow for effective contribution to standards development at an ideal stage in which products and services are still under development. Australia is generally known to play a strong role in standards development. Accelerating technological change makes this role even more important to facilitate fast adoption of new technology and realisation of its benefits.

More generally, Australia should strive for a more judicious and effective mix of standards and regulation in lifting public safety, consumer confidence and business performance.

There is considerable potential for the more effective use of consensus-developed standards in addressing a range of economic and social opportunities and challenges. In some cases, standards can work alongside formal regulatory approaches (such as when standards are called up in regulatory instruments) and at other times as a lower-cost substitute for formal regulation.

There has been a tendency for government to move away from the use of Australian standards. While international consistency and efficiency have clear value, international standards development processes may be unduly influenced by particular interests without adequate opportunities for Australian input reflecting domestic expertise, local conditions and needs. The Australian Government should continue to help fund Australian involvement in international standards development and it should ensure that an Australian filter is applied before the adoption of international standards in Australia.

There is also a disturbing inclination for Australian government agencies to forego the well-regarded model of the transparent, consensus approach to the development of standards in favour of rules and regulations developed by the agencies themselves (e.g. with respect to product energy efficiency). Government agencies typically do not have the technical expertise, the practical experience or the proficiency in effective and structured consultation with industry and others in the community. The result is often sub-standard, and government should be more willing to back and expedite the use of the more transparent consensus driven standards development model.

***AI Group recommendation: With respect to the AHRC's Proposals 12, 23 and 29, we support standards as an appropriate avenue for addressing a range of issues with respect to AI and other technologies. Consideration should also be given to a suitable forum such as Standards Australia to consider standards discussions that impact on a wide range of stakeholders.***

## 8. Assessment tool for AI

***AHRC Proposal 14: The Australian Government should develop a human rights impact assessment tool for AI-informed decision making, and associated guidance for its use, in consultation with regulatory, industry and civil society bodies. Any 'toolkit for ethical AI' endorsed by the Australian Government, and any legislative framework or guidance, should expressly include a human rights impact assessment.***

The AHRC's Proposal 14 refers to an AI Ethics Toolkit, which the Government proposed in its AI Ethics Framework Discussion Paper. Previous member feedback about such a Toolkit was positive, with one member stating that it:

*provides helpful basic tools for best practice development of AI in a way that will uphold the proposed core principles. This toolkit is welcomed for the design of any new technology since it aims at increasing*





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*understanding of capability and limitations by different stakeholders. Over time, these principles and tools may help to enhance development of internal policies, and engineering processes/systems for AI.*

We note that human rights considerations are captured as part of the Government's final AI Ethics Principles ("Human-centred values"), and expect that this would be reflected in the associated AI Ethics Toolkit. As the AHRC notes in its Discussion Paper, "the Government's recently published AI Ethics Principles, the second principle referring to the need for AI systems to respect human rights, diversity and personal autonomy throughout the AI lifecycle, including the careful consideration of risk".

***Ai Group recommendation: With respect to the AHRC's Proposal 14, we support the consideration of human rights as part of an AI Ethics Framework including AI Ethics Toolkit.***

## 9. Regulatory sandbox for AI

***AHRC Proposal 15: The Australian Government should consider establishing a regulatory sandbox to test AI-informed decision-making systems for compliance with human rights.***

We are supportive of alternative measures to traditional heavy-handed regulation. The AHRC's proposal for a regulatory sandbox to test AI with respect to human rights is worth considering further. To maximise the utilisation of such sandboxes, participants should also be given the option of selecting a closed "one-on-one" environment between the relevant regulator and their business if they are concerned about protecting their intellectual property.

As previously stated in our submission to the AHRC, in some areas of regulation in response to modern technology, we have been alarmed by heavy-handed interventions that seek to eliminate some forms of risk rather than manage them, while ignoring the risks and costs to innovation and the economy. For example, the *Telecommunications and other Legislation Amendment (Assistance & Access) Act 2018* (Cth) was rushed through Australian Parliament at the end of 2018 without full consideration of the impact that this could create for a broad range of stakeholders including industry, civil society, and technical and privacy experts. This has led to unintended consequences, including Australia's image overseas in relation to trust in Australian products and services, and concern that the legislation could lead to the weakening of existing cyber security and privacy of businesses and its customers.<sup>6</sup> We note that the AHRC has expressed similar concerns.

Part of this regulatory response could be due to criticism and concern that legislators and regulators are generally not moving fast and flexibly enough to adapt and respond to the pace of technological change. There could also be a lack of understanding of the broader context, such as: the technology; business models; the effect of globalisation; and the role of the different government regulators and other agencies in this environment.

While regulation has a role in addressing reasonable public concerns such as around security, safety, privacy and environmental issues, there are also often alternative approaches to the regulatory "stick". Regulatory barriers should only be introduced where there are clear net community benefits.

<sup>6</sup> Joint submission to the Parliamentary Joint Committee on Intelligence and Security's (PJICIS), *Review of the amendments made by the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (TOLA Act)* (Submission No. 23, July 2019), Link: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Amendments\\_TOLAAct2018/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Amendments_TOLAAct2018/Submissions); Joint submission to the Independent National Security Legislation Monitor (INSLM), *Review of the TOLA Act* (Submission No. 15, September 2019), Link: <https://www.inslm.gov.au/submissions/tola>; Ai Group submission to the INSLM, *Review of the TOLA Act* (Submission No. 12, September 2019), Link: <https://www.inslm.gov.au/submissions/tola>; Australian Strategic Policy Institute (ASPI), *Perceptions survey: Industry views on the economic implications of the Assistance and Access Bill 2018* (December 2018), p. 3.



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***Ai Group recommendation: With respect to the AHRC's Proposal 15, we support for further consideration the use of regulatory sandboxes (including the option of doing this in a closed one-on-one environment) and other alternative light-handed approaches (e.g. innovation hubs) to test AI with respect to human rights.***

## 10. Facial recognition technology moratorium

***AHRC Proposal 11: The Australian Government should introduce a legal moratorium on the use of facial recognition technology in decision making that has a legal, or similarly significant, effect for individuals, until an appropriate legal framework has been put in place. This legal framework should include robust protections for human rights and should be developed in consultation with expert bodies including the Australian Human Rights Commission and the Office of the Australian Information Commissioner.***

We appreciate the AHRC's human rights concerns that may arise in relation to facial recognition technology. However, we do not consider its Proposal 11 for a legal moratorium to be a proportionate response. As the AHRC acknowledges in its Discussion Paper, the technology is already being implemented and integrated with other technologies such as AI. In this respect, we consider that it would be more practical to treat facial recognition technology in conjunction with AI. Further, a legal moratorium has the potential to not only stifle innovation but also create other unintended consequences for businesses and the community, as seen with the Anti-Encryption Act.

For example, there are positive use cases in which facial recognition technology is being deployed that benefits society. To address concerns about workers being underpaid and meeting workplace legal requirements, facial recognition technology has been used by some companies to ensure that they keep a proper record of the starting and finishing times of work.<sup>7</sup> This technology is also becoming a more common application in providing efficient and accurate entry management of staff and visitors at buildings and sites, which ultimately protects the security and safety of individuals and sensitive information.<sup>8</sup>

In light of the above, we consider a more proportionate option to testing human rights issues that may arise from the use of facial recognition technology is through further consideration of a regulatory sandbox (including the option of doing this in a closed one-on-one environment as discussed above), and other alternative light-handed approaches (e.g. innovation hubs), similar to the AHRC's Proposal 15.

***Ai Group recommendation: With respect to the AHRC's Proposal 11, as an alternative to a legal moratorium, further consideration should be given to a regulatory sandbox (including the option of doing this in a closed one-on-one environment) and other alternative light-handed approaches (e.g. innovation hubs) for testing issues such as human rights that may arise from the use of facial recognition technology.***

## 11. Education and training

***AHRC Proposal 16: The proposed National Strategy on New and Emerging Technologies (see Proposal 1) should incorporate education on AI and human rights. This should include education and training tailored to the particular skills and knowledge needs of different parts of the community, such as the general public and those requiring more specialised knowledge, including decision makers relying on AI datapoints and professionals designing and developing AI-informed decision-making systems.***

<sup>7</sup> "New rules require office workers to clock in and out of work amid wage theft concerns" (ABC News website, 29 February 2020), Link: <https://www.abc.net.au/news/2020-02-29/fair-work-wage-theft-underpayment-rule-sparks-bundy-clock-surge/12001204>.

<sup>8</sup> "How AI is changing the Australian resources sector" (IT Brief website, 3 December 2019), Link: <https://itbrief.com.au/story/how-ai-is-changing-the-australian-resources-sector>



The Australian Industry Group  
51 Walker Street  
North Sydney NSW 2060  
Australia  
ABN 76 369 958 788

*AHRC Proposal 27: Professional accreditation bodies for engineering, science and technology should consider introducing mandatory training on 'human rights by design' as part of continuing professional development.*

*AHRC Proposal 28: The Australian Government should commission an organisation to lead the national development and delivery of education, training, accreditation, and capacity building for accessible technology for people with disability.*

In our previous submission to the AHRC, we supported consideration of non-regulatory options such as education and training to properly address issues of bias and discrimination in AI. The AHRC's examples of where AI can create the risk of bias and discrimination highlight a potential lack of understanding about the use of data and AI, and its inadvertent impact on the community (i.e. bias and discrimination).

With the education system going through its own transition in responding to the pace of technological change and meeting the demands of industry and the public, we considered that the AHRC has a key role in influencing discussions around reform of the education system in this context. We therefore welcome the AHRC's Proposals 16, 27 and 28 relating to education and training.

***Ai Group recommendation: With respect to the AHRC's Proposals 16, 27 and 28, we support the consideration of education and training on human rights with respect to AI and other emerging technologies.***

If you would like clarification about this submission, please do not hesitate to contact me or our Digital Capability and Policy Lead Charles Hoang (02 9466 5462, [charles.hoang@aigroup.com.au](mailto:charles.hoang@aigroup.com.au)).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Burn', written over a light blue horizontal line.

**Peter Burn**  
Head of Influence and Policy

