



March 23, 2020

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

Dear Commissioner,

Thank you for the opportunity to provide a submission in response to the Australian Human Rights Commission's (AHRC) "Human Rights and Technology Discussion Paper", released in December 2019 as part of the Commission's Human Rights and Technology Project.

By way of background, the Digital Industry Group Inc. (DIGI) is a non-profit industry association that advocates for the interests of the digital industry in Australia, with Google, Facebook, Twitter and Verizon Media as its founding members. DIGI also has an associate membership program and our other members include Redbubble, eBay and GoFundMe.

DIGI's vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected. DIGI's mission is to advocate for policies that enable a growing Australian technology sector that supports businesses and Internet users, in partnership with industry, governments and the community.

We recognise the importance of the issues raised in the AHRC's discussion paper and have focused comments on the areas relating to Artificial Intelligence<sup>1</sup> (AI), since they represent the bulk of the paper's recommendations. DIGI believes that AI can support fairer decision-making, public safety and more inclusive and informed societies -- however, we do acknowledge its capacity for unintended consequences, and the need for solutions to mitigate against potential harm.

In response to several of the proposals advanced, this submission offers some considerations and information in relation to AI and digital platforms for the AHRC to consider as it progresses this project.

Should you have any questions about the representations made in this submission, please do not hesitate to contact me.

Best regards,



Managing Director  
Digital Industry Group Inc. (DIGI)

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<sup>1</sup> Definitions of "Artificial intelligence" can vary. For the purposes of this submission, we adopt the definition used by the Information Technology Industry Council (ITI) available at ITI, *Artificial Intelligence*, <https://www.itic.org/policy/artificial-intelligence>.

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## Broader benefits and applications of AI

DIGI welcomes the AHRC’s acknowledgement of the benefits of AI. In general, DIGI believes that AI can support fairer decision-making, public safety and more inclusive and informed societies, in part because algorithms and machine learning are being used by a wide diversity of private sector industries and public sector departments. This is also why AI is used by businesses of different sizes, throughout the economy.

Some of the myriad of beneficial applications include:

- **Benefits to health:** AI is helping people attain better health and well-being; a report by PwC demonstrates how AI is already transforming eight components of the healthcare system, including preventative health, diagnosis, decision-making, palliative care, research and training<sup>2</sup>. As one example, Google’s DeepMind Health works in partnership with clinicians, researchers and patients to solve real-world healthcare problems by applying machine learning to develop software to improve clinical outcomes<sup>3</sup>.
- **Disability access and services:** AI is transforming inclusion and access to services for people with disabilities and the elderly. AI-powered devices that use voice commands, such as Amazon Echo and Google Home and Google Assistant technology<sup>4</sup> are being used by people with limited sight or mobility<sup>5</sup>, and Facebook uses AI to automatically write photo captions for the blind and visually impaired<sup>6</sup>.
- **The evolution of work:** While there is a fear that AI can result in job losses, research from AlphaBeta actually shows that positive change is happening through workers switching to different tasks within the same jobs, while machines absorb an increasing load of dangerous

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<sup>2</sup> PwC (June 2017) *What doctor? Why AI and robotics will define New Health*, available at: <https://www.pwc.com/gx/en/industries/healthcare/publications/ai-robotics-new-health/transforming-healthcare.html>.

<sup>3</sup> DeepMind (2019) *About DeepMind Health*, available at: <https://deepmind.com/applied/deepmind-health/about-deepmind-health/>

<sup>4</sup> Feros Care (2019), “MyFeros and Google Assistant are helping seniors live in their homes longer” available at <https://www.feroscare.com.au/feros-stories/articles/myferos-and-google-assistant-are-helping-seniors-live-in-their-homes-longer>

<sup>5</sup> The Tipping Foundation (2018) *6 ways smart home technology is benefitting people with disability*, available at: <https://www.tipping.org.au/6-ways-smart-home-technology-is-benefitting-people-with-disability/>

<sup>6</sup> Matt Burgess (April 5, 2016) “Facebook’s AI now writes photo captions for blind users”, *Wired UK*. Available at <https://www.wired.co.uk/article/facebook-ai-image-recognition-caption-accessibility-blind-users>

and repetitive routine work<sup>7</sup>; It predicts that workplace injuries will fall by 11% and job satisfaction will increase among low-skilled workers as dangerous manual tasks are automated.

- **Emergency prevention:** AI is being used in emergency response and conflict prevention. The UK's Turing Institute and the US' Political Instability Task Force have been building AI capable of predicting where future conflicts may occur, drawing upon statistical data, military reports and analysing news reports<sup>8</sup>.

The ways AI to result in social good are countless -- as an example of the possibilities, in response to its AI Impact Challenge, Google received 2602 applications from around the world with different ideas for how AI to help address societal challenges<sup>9</sup>. Yet Australia currently lags among global leaders across the G20 in the adoption of automation, with 50 per cent fewer Australian firms actively investing in automation compared to firms in comparable economies. Only 9% of ASX companies are making sustained investments in automation, compared with more than 20% in the US and 14% in leading automation nations globally<sup>10</sup>. The immense potential for social good from AI and Australia's relative global standing in this area of global growth needs to be taken into account in the consideration of any new regulatory frameworks.

## Mitigating unintended consequences

At the same, we do acknowledge and take extremely seriously AI's capacity for unintended negative consequences, and the need for effective solutions to mitigate against potential harm. Many DIGI members are leading important, multi-stakeholder industry initiatives to ensure ethical considerations are taken into account in the development and application of AI. For example, several DIGI members are partners of the Partnership on AI, a multi-stakeholder organisation that brings together academics, researchers, civil society organisations and companies that build and use AI technology. The partnership is developing best practices in "fairness and inclusivity, explanation and transparency, security and privacy, values and ethics, collaboration between people and AI systems, interoperability of systems, and of the trustworthiness, reliability, containment, safety, and robustness of the technology."<sup>11</sup> The benefits of multi-stakeholder industry partnerships are already emerging; as one example, Facebook worked with researchers from the algorithmic fairness community to develop an internal tool called "Fairness Flow". It measures an algorithm's fairness across a growing number of parameters, and has been incorporated into Facebook's internal machine learning platform and is being further scaled so that the company can use it to evaluate the personal and societal implications for each product they build<sup>12</sup>.

DIGI also recognises the important role for governments in ensuring the ethical application of AI in addition to such initiatives, ensuring that existing laws relating to discrimination and privacy can be applied to this emerging use of technology, while also fostering innovation in this important area. We welcome the release of the Australian Government's AI Ethics Principles that provide guidance to a

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<sup>7</sup> AlphaBeta (2017), *The Automation Advantage*, available at <https://www.alphabeta.com/wp-content/uploads/2017/08/The-Automation-Advantage.pdf>

<sup>8</sup>Weisi Guo (October 15, 2018) 'Retool AI to forecast and limit wars', *Nature: International Journal of Science*, available at: <https://www.nature.com/articles/d41586-018-07026-4>

<sup>9</sup> Google AI blog (2019), "2,602 uses of AI for social good, and what we learned from them", available at <https://www.blog.google/outreach-initiatives/google-org/2602-uses-ai-social-good-and-what-we-learned-the-m/>

<sup>10</sup> AlphaBeta (2017), *The Automation Advantage*, available at <https://www.alphabeta.com/wp-content/uploads/2017/08/The-Automation-Advantage.pdf>

<sup>11</sup>Partnership on AI (2018) "About Us", available at <https://www.partnershiponai.org/about/>

<sup>12</sup>Stephen Shankland (2019) 'Facebook starts building AI with an ethical compass', *CNet*, available at <https://www.cnet.com/news/facebook-starts-building-ai-with-an-ethical-compass/>

wide range of companies using AI to prevent unintended consequences and ensure the highest standards of ethical business and good governance<sup>13</sup>. These provide a helpful framework for companies across a wide range of sectors to ensure the ethical application of AI, and further work should occur to ensure these are well socialised across different industries in different sectors.

## AI & digital platforms

In this section, we outline how AI is used in digital products and services to ensure information is discoverable, safe and relevant.

On digital platforms, AI and algorithms play an important role as a sorting mechanism for the millions of terabytes of information online, enabling people to readily obtain relevant content and information. For example, machine learning enables Google's understanding of the use of varied language in search, to ensure user queries yield relevant information<sup>14</sup>. This technology is constantly evolving to meet changing user expectations -- for example, Google has introduced an open-sourced neural network-based technique for natural language processing (NLP) that increases its search engine's understanding and actioning of longer and conversational user queries allowing people to use language more naturally.

Data collection and algorithm use are also central to how digital service providers guard the safety and security of Internet users, and address harmful content. Such technology is having a great effect; today, 67.8% of videos taken down for policy or legal violations on YouTube are removed through a combination of "automated flagging" and human review before they receive a single view<sup>15</sup>. On Facebook in the last quarter, 99.5%, of child nudity and sexual exploitation content, 98.6% of violent and graphic content and 98.5% terrorist content respectively were proactively removed before being reported by the public<sup>16</sup>. This is well aligned with the Government's recommended approach in relation to specific types of harmful content. For example, the Government's recently released Online Safety Charter, which is in immediate effect, outlines expectations of the industry in relation to online safety; It includes a requirement that content hosts and other relevant technology companies "Put processes in place to detect, surface, flag and remove illegal and harmful conduct, contact and content with the aim of preventing harms before they occur"<sup>17</sup>

Machine learning also helps detect varying patterns of online abuse. For example, Twitter uses behavioural signals to identify users who target others with abuse or harassment and limits the visibility of their tweets. Facebook uses machine learning and a range of signals to identify posts from people who might be at risk of suicide, such as phrases in posts and concerned comments from friends and family, which involves a complex exercise in analysing human nuance, including analysis of the text in the post and the comments under the post. Once a cry for help is identified, Facebook may present the person with support options, including resources for help, help-line phone numbers, and ways to connect with loved ones. This speaks to a larger point that algorithms do not operate in isolation from human intervention; in relation to content removal, it is often the case that AI surfaces

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<sup>13</sup> Department of Industry, Innovation & Science (2019), [AI Ethics Principles](https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles), available at <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles>

<sup>14</sup> Google AI Blog (2019), Understanding searches better than ever before, available at <https://www.blog.google/products/search/search-language-understanding-bert/>

<sup>15</sup> YouTube (2019), [YouTube Community Guidelines enforcement](https://transparencyreport.google.com/youtube-policy/removals), available at <https://transparencyreport.google.com/youtube-policy/removals>

<sup>16</sup> Facebook (2019), Community Standards Enforcement Report, available at <https://transparency.facebook.com/community-standards-enforcement>

<sup>17</sup> Australian Government (2019), *Online Safety Charter*, p.3. Available at: <https://www.communications.gov.au/file/48925/download?token=qjh8NOGg>

problematic content for a human moderator to review for context and accuracy, and to guide the most effective decision. AI plays an important role in scanning content at a scale that humans could never achieve (to prioritise suspicious content for further review by a human), at a speed which was previously not possible.

Finally, AI can also be used to ensure the personalisation and relevance of information that a digital platform user sees. However, for most digital platforms, users exercise a level of control over the information that is displayed to them. For example, Twitter’s news algorithm is dictated by the user’s choices on which other Twitter accounts they choose to follow. Organic content in a Facebook News Feed is a reflection of the friends, family, groups and pages a user chooses to connect with or follow. In both examples, users have control over content by choosing to unfollow or unfriend other user accounts and often other tools offered (for example, Facebook makes available tools like See First or Snooze which gives greater control to users over what they see in News Feed). Where practical, users can be afforded choices in relation to the display of information; for example, Twitter users also have the option of viewing their feed in reverse chronological order. Youtube’s recommendation engine works by surfacing recommendations for content that is similar to the content you have selected or is popular on the site. Over the past year, Youtube has made a number of improvements to these recommendations, including prioritising content from authoritative sources when people are coming to YouTube for news, as well as reducing recommendations of content that comes close to violating their policies or spreads harmful misinformation. In the US, these changes have resulted in a 50% decrease in the views of such content, and similar improvements are being tested in other markets including Australia.

In closing, in light of the unprecedented challenge that the COVID-19 pandemic is currently causing globally, this underlines the incredible importance of automated systems in various situations where human beings are unable to work.<sup>18</sup>.

## Governing AI

In exploring new regulatory frameworks for AI, it is important that the policy problem that the framework is designed to solve is extremely clear. As indicated in the table below, many of the identified potential problems related to AI use on digital platforms and other sectors have emerging or new regulatory frameworks announced or in place that are designed to address these specifically. It is important that these are closely examined and assessed over time --and potentially updated to encompass the increased use of AI -- and that any new solutions are only proposed in relation to defined gaps in AI harm mitigation.

Potential problem associated with AI & digital platforms	Australian Government proposed or existing solution
Discrimination and bias	<ul style="list-style-type: none"> <li>● Federal anti-discrimination legislation already protects people from discrimination and from breaches of their human rights, in relation to age, disability, racial and sex discrimination<sup>19</sup>.</li> <li>● In addition to the federal legislation, each state and territory in Australia has established equal opportunity</li> </ul>

<sup>18</sup> Facebook, 20/03/20, “Keeping People Safe and Informed About the Coronavirus”, available at <https://about.fb.com/news/2020/03/coronavirus/#content-review>

<sup>19</sup> Australian Human Rights Commission, “Legislation”, available at <https://www.humanrights.gov.au/our-work/legal/legislation>

	<p>and anti-discrimination agencies, with statutory responsibilities<sup>20</sup>.</p> <ul style="list-style-type: none"> <li>• The Department of Industry Innovation &amp; Science’s AI ethics principles outline eight principles when using AI, including one on “fairness” which indicates that “AI systems should be inclusive and accessible, and should not involve or result in unfair discrimination against individuals, communities or groups<sup>21</sup>”</li> </ul>
Privacy (i.e. the privacy of information collected by algorithms)	<ul style="list-style-type: none"> <li>• There are State and Federal Privacy Commissioners monitoring compliance with the State and Federal Privacy Acts.</li> <li>• As part of its roadmap in response to the ACCC Digital Platforms Inquiry, the Government will commence an economy-wide review of the Privacy Act in 2020.</li> <li>• As announced in March 2019, the Government announced a digital platforms specific privacy code, to be administered by the Office of the Australian Information Commissioner<sup>22</sup>.</li> <li>• The Department of Industry Innovation &amp; Science’s AI ethics principles outline eight principles when using AI, including one on “Privacy protection and security” where “AI systems should respect and uphold privacy rights and data protection, and ensure the security of data.<sup>23</sup>”</li> </ul>
Competition	<ul style="list-style-type: none"> <li>• As part of its roadmap in response to the ACCC Digital Platforms Inquiry, the Government has established a special unit in the ACCC to monitor and report on the state of competition and consumer protection in digital platform markets.</li> </ul>
Distribution of news and harmful content	<ul style="list-style-type: none"> <li>• As part of its roadmap in response to the ACCC Digital Platforms Inquiry, the Government has asked the major digital platforms to develop a voluntary code/s of conduct on disinformation and news quality, to be overseen by the ACMA.</li> <li>• As part of its roadmap in response to the ACCC Digital Platforms Inquiry, the Government is addressing bargaining imbalances between digital platforms and news media businesses by asking the ACCC to work with the relevant parties to develop and implement a voluntary code to address these concerns.</li> </ul>
Online safety	<ul style="list-style-type: none"> <li>• The Government established an eSafety Commissioner in 2015.</li> </ul>

<sup>20</sup> Australian Human Rights Commission, “A quick guide to Australian discrimination laws” available at <https://www.humanrights.gov.au/our-work/employers/quick-guide-australian-discrimination-laws>

<sup>21</sup> Department of Industry, Innovation & Science (2019), [AI Ethics Principles](https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles), available at <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles>

<sup>22</sup> Attorney General’s Department (2019), “Tougher penalties to keep Australians safe online”, available at <https://www.attorneygeneral.gov.au/media/media-releases/tougher-penalties-keep-australians-safe-online-24-march-2019>

<sup>23</sup> Department of Industry, Innovation & Science (2019), AI Ethics Principles, available at <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles>

	<ul style="list-style-type: none"> <li>• As noted, algorithm use to protect online safety is encouraged by the Australian Government through its Online Safety Charter.</li> <li>• The eSafety Commissioner’s Safety-by-design processes similarly encourages the use of technology to proactively detect harmful and illegal content<sup>24</sup>.</li> <li>• As part of its Taskforce to Combat Terrorist and Extreme Violent Material Online, designated digital platforms are required to review the operation of algorithms and other processes that may drive users towards (or amplify) terrorist and extreme violent material and to better understand possible intervention points<sup>25</sup>.</li> </ul>
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DIGI considers that the majority of potential problems associated with AI lie in the contextual application of the technology in a variety of sectors, and therefore caution against recommendations for regulatory or centralised bodies focused on reviewing the technology of AI itself, such as the recommendation by the AHRC for an “AI Safety Commissioner”. Setting standards of acceptability for the real-world outcomes of algorithmic applications is a more effective way to assess their impact than examining the algorithm itself, and will also be more effective in mitigating harm.

Secondly, requirements to disclose specific technical details of the way in which algorithms operate, such as detailed information on the signals and predictions used, would not provide meaningful transparency to people. However, these would enable third parties to more easily game the system. For example, in the case of algorithms that are used to detect and remove harmful content, making them public would allow bad actors to manipulate posts to evade algorithm changes. We saw this phenomenon take place in the immediate aftermath of the terrorist attacks in Christchurch in March 2019 where an unprecedented number of people were actively manipulating the livestreamed footage of the attacks to avoid detection by algorithms.

Thirdly, a focus on AI outcomes would also serve to avoid problems related to the protection of valuable commercial intellectual property. The finer details of how algorithms and AI work constitute highly sensitive commercial information for any company using proprietary technology. The prospect of having to disclose such sensitive information for monitoring will serve as a deterrent to digital services, startups or any company initiating or expanding their investment in AI in Australia, particularly as this technology is rapidly evolving. This could ultimately negatively affect the variety and quality of AI-enabled products and services available to Australian consumers.

Finally, any centralised AI review organisation, as proposed by the AHRC, may face significant human resources challenges, as an extremely high level of both technological expertise in relation to AI would be required alongside highly in-depth, sector-specific knowledge of every industry and government vertical where AI is applied, again noting that these technologies will be used across the economy, not just by a small number of highly digitised companies.

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<sup>24</sup> Office of the eSafety Commissioner (2019), *Safety by Design: Placing user safety at the forefront of online service design*, available at <https://www.esafety.gov.au/sites/default/files/2019-10/SBD%20-%20%20Principles.pdf>

<sup>25</sup> Australian Government (2019), Report of the Australian Taskforce to Combat Terrorist and Extreme Violent Material Online, available at <https://www.pmc.gov.au/sites/default/files/publications/combat-terrorism-extreme-violent-material-online.pdf>

It is for these reasons that principles-based government approaches such as the AI Ethics framework are effective and practical solutions to AI risk mitigation because of their outcomes focus in encouraging “organisations using AI systems to strive for the best outcomes for Australia and Australians”. As noted, to solve many of the issues the AHRC identifies, we’d encourage further socialisation of this framework across different industries and sectors, and that relevant sector-specific laws -- such as those used to prevent discrimination and bias -- be modernised over time to allow for the use of AI.

## Responses to specific proposals

The previous sections outline DIGI’s high level approach in relation to ethics and AI. Included in this section are brief remarks about some of the specific proposals raised in the AHRC’s discussion paper.

AHRC proposal	DIGI’s position
<p>1</p> <p>The Australian Government should develop a National Strategy on New and Emerging Technologies. This National Strategy should:</p> <p>(a) set the national aim of promoting responsible innovation and protecting human rights</p> <p>(b) prioritise and resource national leadership on artificial intelligence (AI)</p> <p>(c) promote effective regulation— this includes law, co- regulation and self-regulation</p> <p>(d) resource education and training for government, industry and civil society.</p>	<p>No objection, but would caution against new bodies undertaking this work when there is already a commitment by the Australian Government through the Department of Industry, Science, Energy and Resources to explore the role of AI in Australia’s future, develop policy, build our artificial intelligence capability.<sup>26</sup></p> <p>This includes a focus on ethics, through the AI ethics framework.</p>
<p>2</p> <p>The Australian Government should commission an appropriate independent body to inquire into ethical frameworks for new and emerging technologies to:</p> <p>(a) assess the efficacy of existing ethical frameworks in</p>	<p>The Department of Industry, Science, Energy and Resources’ AI ethics principles were launched on November 7, 2019. Further work needs to be done to socialise these principles across relevant industries and sectors; it would be premature, and not an effective use of Government resources, to commission an independent body to review these at this early stage.</p>

<sup>26</sup> <https://www.industry.gov.au/strategies-for-the-future/artificial-intelligence>

<p>protecting and promoting human rights</p> <p>(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.</p>	
<p>4</p> <p>The Australian Government should introduce a statutory cause of action for serious invasion of privacy.</p>	<p>DIGI is supportive of the need to prevent serious and harmful invasions of privacy economy-wide.</p>
<p>5</p> <p>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.</p>	<p>Given the increasing applications of AI in a wide range of sectors and industries, it may not be practical for the wide range of companies to provide notice of AI usage in a way that is meaningful for a consumer. The definition "legal, or similarly significant" is also extremely broad and therefore could contribute to an abundance of notices. This could serve to contribute to "notice fatigue" whereby consumers do not meaningfully engage with notices about their information. A more effective solution is to focus on legislation that mitigates harm in the contextual application of AI.</p>
<p>7</p> <p>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:</p> <p>(a) a non-technical explanation of the AI-informed decision, which would be comprehensible by a lay person, and</p>	<p>Further detail is needed on the situations where this legislation could be used, given the increasing prevalence of AI technology economy wide. Again, we encourage a focus on mitigating harmful outcomes of AI rather than a focus on the technical mechanics of an algorithm itself.</p>

<p>(b) a technical explanation of the AI-informed decision that can be assessed and validated by a person with relevant technical expertise.</p> <p>In each case, the explanation should contain the reasons for the decision, such that it would enable an individual, or a person with relevant technical expertise, to understand the basis of the decision and any grounds on which it should be challenged.</p>	
<p>8</p> <p>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.</p>	<p>It would be challenging to define “reasonable explanations”, and thus further clarity is needed on the situations where this would apply , including what types of infringements are within scope.</p>
<p>9</p> <p>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.</p>	<p>DIGI supports this recommendation in principle.</p>
<p>10</p> <p>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.</p>	<p>This is extremely problematic in a company situation where many individual employees will work on a product involving AI. It is not appropriate to designate particular individuals as liable for technology developed in a commercial setting.</p> <p>While we encourage frameworks to reflect human rights in AI, such strict liability regimes would discourage individuals from entering into STEM careers where AI is and will continue to be prevalent.</p> <p>As noted, Australia currently lags among global leaders across the G20 in the adoption of automation, with 50 per cent fewer</p>

	<p>Australian firms actively investing in automation compared to firms in comparable economies. More broadly, we should be looking at how we encourage greater innovation using AI and such strict personal liability regimes will be counter-productive to those goals.</p> <p>DIGI would again encourage exploration of updating sectoral legislation in line with increased use of AI to mitigate harmful outcomes, rather than a focus on the production of the technology itself.</p>
<p>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.</p>	<p>Any restrictions on the use of particular technologies need to be evidence-based, proportionate and balanced. Before recommending a blanket moratorium on a specific technology, further work is required to precisely define the specific harms, and the best means for addressing those harms.</p>
<p>12 Any standards applicable in Australia relating to AI-informed decision making should incorporate guidance on human rights compliance.</p>	<p>DIGI supports this recommendation in principle, and this is something to consider in accompanying guidance as part of efforts to socialise the AI ethics principles across different industries and sectors.</p>
<p>13 The Australian Government should establish a taskforce to develop the concept of 'human rights by design' in the context of</p>	<p>A taskforce could have some merit, but DIGI cautions against any sort of certification scheme pertaining to AI. Developing a certification scheme that could meaningfully guide the public would be arguably impossible with the diversity of AI methods and applications. It is also questionable whether certification schemes lead to demonstrably better informed decisions by the</p>

<p>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.</p>	<p>public. Finding people who could effectively assess AI behind such a scheme would be a major human resources challenge, as an extremely high level of both technological expertise in relation to AI would be required alongside highly in-depth, sector-specific knowledge of every industry and government vertical where AI is applied, again noting that these technologies are used across the economy.</p>
<p>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.</p>	<p>DIGI supports this recommendation in principle, and encourages the use of toolkits that companies can flexibly apply to varying circumstances.</p>
<p>15 The Australian Government should consider establishing a regulatory sandbox to test AI-informed decision-making systems for compliance with human rights.</p>	<p>DIGI expresses preliminary support for this recommendation, but would need to see more detail and better understand scope.</p>
<p>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</p>	<p>DIGI supports this recommendation in principle.</p>

<p>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.</p>	
<p>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:</p> <ul style="list-style-type: none"> <li>(a) build the capacity of existing regulators and others regarding the development and use of AI</li> <li>(b) monitor the use of AI, and be a source of policy expertise in this area</li> <li>(c) be independent in its structure, operations and legislative mandate</li> <li>(d) be adequately resourced, wholly or primarily by the Australian Government</li> <li>(e) draw on diverse expertise and perspectives</li> <li>(f) determine issues of immediate concern that should form priorities and shape its own work.</li> </ul>	<p>DIGI considers that the majority of potential problems associated with AI lie in the contextual application of the technology in a variety of sectors, and therefore cautions against recommendations for regulatory or centralised bodies focused on reviewing the technology of AI itself, such as the proposal for an “AI Safety Commissioner”.</p> <p>If the implication in 19b (“monitor the use of AI”) involves reviewing algorithms, we would caution against such an approach. Setting standards of acceptability for the real-world outcomes of algorithmic applications is a more effective way to assess their impact than examining the algorithm itself, and will also be more effective in mitigating harm.</p> <p>As noted, this also raises intellectual property concerns as the finer details of how algorithms and AI work constitute highly sensitive commercial information for any company using proprietary technology. The prospect of having to disclose such sensitive information for monitoring will serve as a deterrent to digital services, startups or any company initiating or expanding their investment in AI in Australia, particularly as this technology is rapidly evolving. This could ultimately negatively affect the variety and quality of AI-enabled products and services available to Australian consumers.</p> <p>Any centralised AI “monitoring” organisation may face significant human resources challenges, as an extremely high level of both technological expertise in relation to AI would be required alongside highly in-depth, sector-specific knowledge of every industry and government vertical where AI is applied, again noting that these technologies will be used across the economy, not just by a small number of highly digitised companies.</p> <p>Relatedly, It is also unclear how an “AI safety Commissioner” would work alongside the eSafety Commissioner; there should be caution around double-up taking into account the increased usage of AI in online safety.</p>

	<p>It is for these reasons that principles-based government approaches such as the AI Ethics framework are effective and practical solutions to AI risk mitigation because of their outcomes focus in encouraging “organisations using AI systems to strive for the best outcomes for Australia and Australians”. In addition, we would again encourage exploration of updating sectoral legislation in line with increased use of AI to mitigate harmful outcomes, rather than a focus on the production of the technology itself.</p>
<p>26 Providers of tertiary and vocational education should include the principles of ‘human rights by design’ in relevant degree and other courses in science, technology and engineering. With appropriate support, the Australian Council of Learned Academies should undertake consultation on how to achieve this aim most effectively and appropriately within the tertiary and vocational sector.</p>	<p>DIGI supports this recommendation in principle.</p>
<p>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.</p>	<p>DIGI supports this recommendation in principle.</p>
<p>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</p>	<p>DIGI is broadly supportive of this recommendation, however advise against an entirely new standard but rather one that draws upon existing standards.</p>

<p>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.</p>	
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