**Human Rights and Technology Project Discussion Paper**

**SUBMISSION FORM**

**Your name or organisation:**

You can use this form to respond to some or all of the proposals and questions in the Discussion Paper.

Please enter your response below the proposal or question you want to comment on.

**PART A: INTRODUCTION AND FRAMEWORK**

**Chapter 3: Regulation**

**Proposal 1:** The Australian Government should develop a *National Strategy on New and Emerging Technologies*. This National Strategy should:

1. set the national aim of promoting responsible innovation and protecting human rights
2. prioritise and resource national leadership on artificial intelligence (AI)
3. promote effective regulation—this includes law, co-regulation and self-regulation
4. resource education and training for government, industry and civil society.

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**Chapter 4: Ethical Frameworks**

**Proposal 2:** The Australian Government should commission an appropriate independent body to inquire into ethical frameworks for new and emerging technologies to:

1. assess the efficacy of existing ethical frameworks in protecting and promoting human rights
2. 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.

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**Part B: Artificial intelligence**

**Chapter 5: AI-informed decision making**

**Question A:** The Commission’s proposed definition of ‘AI-informed decision making’ has the following two elements: there must be a decision that has a legal, or similarly significant, effect for an individual; and AI must have materially assisted in the process of making the decision.

Is the Commission’s definition of ‘AI-informed decision making’ appropriate for the purposes of regulation to protect human rights and other key goals?

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**Chapter 6: Accountable AI-informed decision making**

**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:

1. protect the principle of legality and the rule of law
2. promote human rights such as equality or non-discrimination.

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

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**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.

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**Proposal 6:** Where the Australian Government proposes to deploy an AI-informed decision-making system, it should:

1. undertake a cost-benefit analysis of the use of AI, with specific reference to the protection of human rights and ensuring accountability
2. engage in public consultation, focusing on those most likely to be affected
3. only proceed with deploying this system, if it is expressly provided for by law and there are adequate human rights protections in place.

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**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:

1. a non-technical explanation of the AI-informed decision, which would be comprehensible by a lay person, and
2. a technical explanation of the AI-informed decision that can be assessed and validated by a person with relevant technical expertise.

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.

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**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.

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**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.

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**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 legally liable for the use of the system.

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**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.

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**Question B:** Where a person is responsible for an AI-informed decision and the person does not provide a reasonable explanation for that decision, should Australian law impose a rebuttable presumption that the decision was not lawfully made?

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**Question C:** Does Australian law need to be reformed to make it easier to assess the lawfulness of an AI-informed decision-making system, by providing better access to technical information used in AI-informed decision-making systems such as algorithms?

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**Question D:** How should Australian law require or encourage the intervention by human decision makers in the process of AI-informed decision making?

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**Chapter 7: Co- and self-regulatory measures for AI-informed decision making**

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

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**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.

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**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.

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

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**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.

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**Proposal 17:** The Australian Government should conduct a comprehensive review, overseen by a new or existing body, in order to:

1. identify the use of AI in decision making by the Australian Government
2. undertake a cost-benefit analysis of the use of AI, with specific reference to the protection of human rights and ensuring accountability
3. outline the process by which the Australian Government decides to adopt a decision-making system that uses AI, including any human rights impact assessments
4. 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
5. examine any monitoring and evaluation frameworks for the use of AI in decision-making.

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**Proposal 18:** The Australian Government rules on procurement should require that, where government procures an AI-informed decision-making system, this system should include adequate human rights protections.

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**Question E:** In relation to the proposed human rights impact assessment tool in Proposal 14:

1. When and how should it be deployed?
2. Should completion of a human rights impact assessment be mandatory, or incentivised in other ways?
3. What should the consequences be if the assessment indicates a high risk of human rights impact?
4. How should a human rights impact assessment be applied to AI-informed decision-making systems developed overseas?

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**Question F:** What should be the key features of a regulatory sandbox to test AI-informed decision-making systems for compliance with human rights? In particular:

1. what should be the scope of operation of the regulatory sandbox, including criteria for eligibility to participate and the types of system that would be covered?
2. what areas of regulation should it cover eg, human rights or other areas as well?
3. what controls or criteria should be in place prior to a product being admitted to the regulatory sandbox?
4. what protections or incentives should support participation?
5. what body or bodies should run the regulatory sandbox?
6. how could the regulatory sandbox draw on the expertise of relevant regulatory and oversight bodies, civil society and industry?
7. how should it balance competing imperatives eg, transparency and protection of trade secrets?
8. how should the regulatory sandbox be evaluated?

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**Part C: National leadership on AI**

**Chapter 8: National leadership on AI**

**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:

1. build the capacity of existing regulators and others regarding the development and use of AI
2. monitor the use of AI, and be a source of policy expertise in this area
3. be independent in its structure, operations and legislative mandate
4. be adequately resourced, wholly or primarily by the Australian Government
5. draw on diverse expertise and perspectives
6. determine issues of immediate concern that should form priorities and shape its own work.

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**Part D: Accessible technology**

**Chapter 9: The right to access technology**

**Proposal 20:** Federal, state, territory and local governments should commit to using Digital Technology that complies with recognised accessibility standards, currently WCAG 2.1 and Australian Standard EN 301 549, and successor standards. To this end, all Australian governments should:

1. Adopt an accessible procurement policy, promoting the procurement of accessible goods, services and facilities that use Digital Technology in a way that meets the above accessibility standards. Such a policy also would favour government procurement from entities that implement accessibility standards in their own activities.
2. Develop policies that increase the availability of accessible communication services such as Easy English versions and human customer supports.

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**Proposal 21:** The Australian Government should conduct an inquiry into compliance by industry with accessibility standards such as WCAG 2.1 and Australian Standard EN 301 549. Incentives for compliance with standards could include changes relating to taxation, grants and procurement, research and design, and the promotion of good practices by industry.

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**Proposal 22:** The Australian Government should amend the *Broadcasting Services Act 1992* (Cth) to require national broadcasting services, commercial broadcasting services, and subscription broadcasting services to:

1. audio describe content for a minimum of 14 hours per week for each channel, with annual increases
2. increase the minimum weekly hours of captioned content on an annual basis.

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**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.

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**Proposal 24:** The National Broadband Network should undertake economic modelling for the provision of a concessional wholesale broadband rate for people with disability who are financially vulnerable.

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**Question G:** What other measures could the private sector take to eliminate barriers to accessibility related to the affordability of Digital Technologies for people with disability?

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**Chapter 10: Design, education and capacity building**

**Proposal 25:** The Council of Australian Governments Disability Reform Council should:

1. lead a process for Australia’s federal, state and territory governments to commit to adopting and promoting ‘human rights by design’ in the development and delivery of government services using Digital Technologies, and monitor progress in achieving this aim
2. include policy action to improve access to digital and other technologies for people with disability as a priority in the next National Disability Strategy.

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**Proposal 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.

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**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.

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**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.

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**Question H:** What other tertiary or vocational courses, if any, should include instruction on ‘human rights by design’?

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**Chapter 11: Legal protections**

**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.

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**Question I:** Should the Australian Government develop other types of Standards, for Digital Technologies, under the *Disability Discrimination Act 1992* (Cth)? If so, what should they cover?

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