

10 March 2020

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

**RE: HUMAN RIGHTS AND TECHNOLOGY DISCUSSION PAPER**

This submission is made jointly by the Australian Privacy Foundation, the Queensland Council for Civil Liberties, Liberty Victoria, Electronic Frontiers Australia and the New South Wales Council for Civil Liberties. We thank the Australian Human Rights Commission for the opportunity to respond to the proposals and questions raised in the most recent Human Rights and Technology Discussion Paper ("**the Discussion Paper**").

In the interest of completeness, we make this submission in addition to the Joint Submission on the Human Rights and Technology Issues Paper dated 2 October 2018 and the AI White Paper dated 8 March 2019 ("**the Previous Submissions**"). We have **attached** both of the Previous Submissions for your convenience.

With the context of the Previous Submissions and at the outset, we consider that the following recommendations were not addressed in the Discussion Paper and remain relevant to the project:

1. Acknowledgement that the development, creation and disposal of technology has **international environmental and social consequences**;
2. Issues of **Indigenous Data Sovereignty** and colonial history of Australia that continues to play out in various ways including with respect to technology - for example Suspect Targeted Management Plan (STMP) program, the Basics or Indue cashless debit card, and a global surveillance architecture conducted from traditional lands (i.e. Pine Gap); and
3. Arrangements for additional protections when new technology is targeted against **vulnerable groups and for criminal justice purposes**. This approach for greater regulation for "high risk" AI applications would be more aligned with EU proposals.

In the following pages we have set out a table with your most recent proposals and questions, and our responses to them.



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New South Wales  
Council for Civil Liberties



ELECTRONIC FRONTIERS  
AUSTRALIA

This submission was authored by **Dr Monique Mann, Mr Angus Murray** and **Mr Milan Gandhi**.

Yours faithfully,



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## Response to Proposals and Questions

#	Proposal / Question	Response
Part A: Introduction and Framework		
P1	<p>The Australian Government should develop a National Strategy on New and Emerging Technologies. This national strategy should:</p> <ul style="list-style-type: none"> <li>a) Set the national aim of promoting responsible innovation and protecting human rights</li> <li>b) Prioritise and resource national leadership on AI</li> <li>c) Promote effective regulation (law, co-regulation, self-regulation)</li> <li>d) Resource education and training for government, industry and civil society.</li> </ul>	<p>Support in principle, further consultation on specifics of National Strategy is required.</p> <p>We also respectfully suggest that this proposal requires the additional support of an <b>enforceable human rights framework</b> introduced into Australia and, directly although not exhaustively, we note that:</p> <ol style="list-style-type: none"> <li>1. Australia lacks a human rights framework despite such regimes existing in all other Western democracies;</li> <li>2. A check and balance for the promotion of responsible innovation is best served by a codified human rights framework;</li> <li>3. National leadership on AI would require comparable human rights protection to enable trade with the United States, European Union and United Kingdom (among other trade partners)<sup>1</sup>; and</li> <li>4. Regulation is best served by ensuring that social norms that underpin many human rights are properly recognised in domestic law<sup>2</sup>.</li> </ol>
P2	<p>The Australian Government should commission an appropriate independent body to inquire into ethical frameworks for new and emerging technologies to:</p> <ul style="list-style-type: none"> <li>a) Assess the efficacy of existing ethical frameworks in protecting and promoting human rights</li> </ul>	<p>Express hesitancy of the trend of relying on ethical frameworks to regulate AI and technology rather than law and regulation.<sup>3</sup> This attention could operate to legitimise ethical frameworks rather than move away from them. More specifically, ethics frameworks are not and ought not be considered to be a substitute for enforceable law. In the context of the engagement of human rights, examples of a structured and considered international norm exist in the International Covenant on Civil and</p>

<sup>1</sup> See for example of harmonising AI and trade: WIPO Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence available at: [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=470053](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=470053).

<sup>2</sup> See: European Commission (2020). On Artificial Intelligence – A European approach to excellence and trust. White Paper. Brussels: European Commission.

<sup>3</sup> Daly, A., Hagendorf, T., Hiu, L., Mann, M., Marda, V., Wagner, B., Wang, W. & Witteborn, S. (2019). Artificial Intelligence Governance and Ethics: Global Perspectives. Chinese University of Hong Kong, Hong Kong. DOI 10.2139/ssrn.3414805

	<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>Political Rights and International Covenant on Economic, Social and Cultural Rights. Although it is important to monitor advances in technology and the opportunities that may present against actual or potential detriment(s) to Australian (and other) persons' human rights.</p>
<p>Part B: Artificial Intelligence</p>		
<p>QA</p>	<p>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; and AI must have materially assisted in the process of making the decision.</p> <p>Is the Commission's definition of 'AI-informed decision making' appropriate for the purpose of regulation to protect human rights and other key goals?</p>	<p>This definition is clearly inspired by Article 22 of the General Data Protection Regulation.<sup>4</sup></p> <p>Article 22 states: The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.</p> <p>We suggest that any Australian legal definition be <b>explicitly consistent</b> with the language of Article 22 as consistency will enable certainty for persons operating in both European and Australian jurisdictions (particularly as the EU GDPR has extraterritorial application), and mean that Australian decision-makers can look to European jurisprudence and commentary in relation to Article 22 to aid in their interpretation of the Australian definition. We note, however, that jurisprudence and commentary in Europe exists within a specific and normatively different European context. Any such guidance, therefore, would only be on a 'soft' basis (i.e. we are not suggesting that such jurisprudence would or could ever be directly imported into Australian law). For example, we note that the right to data protection is enshrined within the European EU Treaties and the EU Charter of Fundamental Rights as a fundamental right. We also suggest that the definition extends <b>beyond decision making and to profiling</b>. That is, the construction and application of</p>

<sup>4</sup> See: Mann, Monique & Matzner, Tobias 2019, 'Challenging algorithmic profiling: The limits of data protection and anti-discrimination in responding to emergent discrimination', *Big Data and Society*, vol. 6, no. 2, pp. 1-11, doi:10.1177/2053951719895805; see also: See also Article 29 Working Party Guidance [https://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=612053](https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=612053).

		<p>group profiles that are used as the basis for decision-making.</p> <p>Note the exclusionary conditions set forth in Article 22 of GDPR:</p> <p>Paragraph 1 shall not apply if the decision:</p> <ul style="list-style-type: none"> <li>a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;</li> <li>b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</li> <li>c) is based on the data subject's explicit consent.</li> </ul> <p>Although we question whether the basis of the data subject's explicit consent is sufficient and what this may mean for individuals especially those that are vulnerable and require a service (such as for e.g. welfare recipients - can they really provide informed and express consent?).</p> <p>In addition to the above, we respectfully suggest that the proposed definition be broadened so as to ensure that the decision made partially or wholly by AI, and whether that involvement be material or otherwise constitutes a reviewable decision noting the requirement that an administrative decision presently requires human mental effect (see: <i>Tang v Griffith University</i>; <i>Bond v Australian Broadcasting Tribunal</i>).</p>
P3	<p>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 changes needed to:</p> <ul style="list-style-type: none"> <li>a) Protect the principle of legality and the rule of law</li> <li>b) Promote human rights such as equality or non-discrimination.</li> </ul>	<p>Support in principle, further consultation on specifics ALRC inquiry required and note the response to P2 above regarding decision making.</p> <p>Also acknowledge limitations of anti-discrimination approaches in responding to forms of emergent or intersectional</p>

		discrimination that arise from new algorithmic profiling methods (i.e. personalisation). <sup>5</sup>
P4	The Australian Government should introduce a statutory cause of action for serious invasions of privacy.	Strongly supported.  The government has committed to a review of the Australian Privacy Act 1988 (Cth) and ought to be incorporated as part of the review. <sup>6</sup>
P5	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.	In our view, any and all application of <b>AI-informed decision making ought to be transparently and clearly explained to the Australian community regardless of whether it directly or indirectly affects a person or persons' interests</b> <sup>7</sup> . We additionally repeat that the Australian Government should go implement GDPR level protections where such automated decision making is prohibited and note the response to P2 above regarding decision making (particularly regarding the issue of materiality).
P6	Where the Australian Government proposes to deploy an AI-informed decision-making system, it should: <ul style="list-style-type: none"> <li>a) Undertake a cost-benefit analysis of the use of AI, with specific reference to the protection of human rights and ensuring accountability</li> <li>b) Engage in public consultation, focusing on those most likely to be affected</li> <li>c) Only proceed with deploying this system, if it is expressly provided for by law and there are adequate human rights protections in place.</li> </ul>	First, the government should, as a paramount and primary consideration, weigh the benefit of AI-informed decision making against any human rights before undertaking a cost-benefit analysis. The human rights consideration should be the first point of a cascading consideration. <sup>8</sup>  Secondly, it is fundamental to the trust in government that the consultative process on AI-informed decision making applications that the proposed data points and algorithm(s) to be applied are open to public scrutiny. Thirdly, the procurement process for AI providers must be transparent and include a conflict of interest declaration. The third party operating to the AI system ought also be subject to reporting obligations and independent oversight. This is discussed in greater detail later in this submission.

<sup>5</sup> See: Mann, Monique & Matzner, Tobias 2019, 'Challenging algorithmic profiling: The limits of data protection and anti-discrimination in re- sponding to emergent discrimination', Big Data and Society, vol. 6, no. 2, pp. 1-11, doi:10.1177/2053951719895805.

<sup>6</sup> Australian Law Reform Commission, '4. A New Tort in a New Commonwealth Act', Serious Invasions of Privacy in the Digital Era (Discussion Paper 80); Butler D, "A Tort of Invasion of Privacy in Australia?" [2005] MelbULawRw 11; (2005) 29(2) Melbourne University Law Review 339.

<sup>7</sup> See also Article 29 Working Party Guidance available at: [https://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=612053](https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=612053).

<sup>8</sup> Mann, M. (2020). Airlines take no chances with our safety. And neither should Artificial Intelligence. The Conversation.

		<p>We also question the wider adequacy of Australian human rights protections - these need to be enforceable, and with recourse for citizens. This is notably absent in the Australian context.</p> <p>Finally, we suggest consideration of the proposed European Commission approach to “high risk” AI, although also note that “low risk” AI applications can also result in harm (e.g. discriminatory search algorithms). This risk, however categorised, is also often unknown at the point of deployment of the system and it is thus critically important that human rights considerations are paramount to any decision to deploy AI-informed decision making systems.<sup>9</sup></p>
P7	<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> <ul style="list-style-type: none"> <li>a) A non-technical explanation of the AI informed decision, which would be comprehensible by a lay person, and</li> <li>b) A technical explanation of the AI-informed decision that can be assessed and validated by a person with relevant technical expertise</li> </ul>	<p>We support this proposal in principle however it ought to be made clear that the reasons for decision (however produced)<sup>10</sup> are liable to both merit and judicial review. <b>The explanation also ought to be both comprehensible to a lay person as well as meaningful as this term is understood in relation to Art 15(1)(h) of the GDPR.</b></p> <p>In this regard, we note that this seems to reflect the transparency provisions of GDPR Article 13, 14 and 15.<sup>11</sup></p>
P8	Where an AI-informed decision-making system does not produce	<b>AI-informed decision making systems should not be deployed in any context if a</b>

<sup>9</sup> European Commission (2020). On Artificial Intelligence – A European approach to excellence and trust. White Paper. Brussels: European Commission.

<sup>10</sup> Wachter, S., Mittelstadt, B., & Floridi, L. (2017). Why a right to explanation of automated decision-making does not exist in the General Data Protection Regulation. *International Data Privacy Law*, 7(2), 76-99; Vedder, A., & Naudts, L. (2017). Accountability for the use of algorithms in a big data environment. *International Review of Law, Computers & Technology*, 31(2), 206–224.

<sup>11</sup> Ananny, M. & Crawford, K. (2018). Seeing without knowing: Limitations of the transparency ideal and its application to algorithmic accountability. *New Media and Society*, 20(3), 973-989; Burrell, J. (2016). How the machine ‘thinks’: Understanding opacity in machine learning algorithms. *Big Data and Society*, 3(1), 1-12; Kemper, J. & Kolkman, D. (2019). Transparent to whom? No algorithmic accountability without a critical audience. *Information Communication and Society*, 22(14), 2081-2096; Edwards, L. & Veale, M. (2017). Slave to the algorithm: Why a right to explanation is probably not the remedy you are looking for. *Duke Law and Technology Review* 16(1), 18–84.

	reasonable explanations for its decisions, that system should not be deployed in any contexts where decisions could infringe the human rights of individuals.	<b>human readable and explainable reasonable process is not able to be extrapolated from the system.</b>
QB	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?	<p>At the outset, AI-informed decision making systems should not be deployed in any context if a human readable and explainable reasonable process is not able to be extrapolated from the system. We also reiterate that notice ought to be required to be provided whenever a decision is in part or otherwise made by an AI-informed system.</p> <p>In this context, <b>we recognise the usefulness of rebuttable presumptions<sup>12</sup> for enhancing access to justice for persons affected by AI-informed decisions<sup>13</sup>.</b> We also submit that any proposed time limit or statutory time bar to seeking a 'reasonable explanation' should be sufficiently lengthy and only run from the point at which a person knows that they are a person affected by an AI-informed decision.</p> <p>Moreover, and more basically, as discussed elsewhere in this submission, sufficient consideration should be given to the legal definition of:</p> <ol style="list-style-type: none"> <li>1. a "decision" (noting the response to P2 above);</li> <li>2. reasonable explanation;</li> <li>3. a person affected by an automated decision; and</li> <li>4. an automated/AI-informed decision.</li> </ol>
P9	Centers 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.	Cannot support on the basis that this appears to be directive of academic research and academics should have intellectual freedom and independence.

<sup>12</sup> LexisNexis, Encyclopaedic Australian Legal Dictionary (at 3 March 2020) 'Rebuttable Presumption'.

<sup>13</sup> Regarding information asymmetry see, for example, page 23 of the Australian Competition & Consumer Commission's 'Digital Platforms Inquiry' (Final Report, June 2019), which states, '[t]he ACCC found that consumers are generally not aware of the extent of data that is collected nor how it is collected, used and shared by digital platforms.'



P10	The Australian Government should introduce legislation that creates a rebuttable presumption that the legal person who deploys an AI-informed decision-making is legally liable for the use of that system.	We agree that a rebuttable presumption is a useful starting point but it is not the 'be all and end all' and further consideration must be given to the the substantive law governing liability (and the potential for proportionate liability) in these cases; however, the person that uses (or is responsible for the use of) AI-informed decision making must be legally liable for the use of that system whether directly or as joint tortfeasor.
QC	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?	<p>Support in principle.</p> <p>The common law does not currently have sufficient remedy for AI-informed decision making<sup>14</sup> (see for example <i>Pintarich v Deputy Commissioner of Taxation</i> [2018] FCAFC 79 per Kerr J).</p> <p>We respectfully repeat our responses to the foregoing questions and proposals. To reiterate these, at a minimum, persons affected by an AI-informed decision-making system should be properly informed about their status as affected persons, how the system functions, what human decision-makers are ultimately in control of/liable for the system, and how to check, challenge and correct the system's decisions.</p>
QD	How should Australian law require or encourage the intervention by human decision makers in the process of AI-informed decision-making?	<p>The Australian Government should implement GDPR level protections where such automated decision making is prohibited (with limited exclusionary conditions), especially in situations that could infringe human rights of individuals.</p> <p>As discussed in response to P7 and QC, <b>persons affected by an AI-informed decision-making system should be properly informed about their status as affected persons, how the system functions, what human decision-makers are ultimately in control of the system, and how to check, challenge and correct the system's decisions.</b> An obligation must therefore be placed on design and development of AI</p>

<sup>14</sup> Murray, A. Legal technology: *Computer says no ...but then what* [online]. Proctor, The, Vol. 39, No. 8, Sep 2019: 48-49. See also: See paragraph 1 (page 3/6) of the European Parliament resolution on Automated decision-making processes, 'Ensuring consumer protection, and free movement of goods and services' (2019/2915(RSP))

		systems to enable intervention by human decision makers so that it is possible to check, challenge and correct the AI system's decisions.
P11	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.	Support in principle, further consultation on the specifics of the legal framework. This should also involve meaningful consultation with civil society (in addition to AHRC and OAIC). <sup>15</sup>  We also note that significant work has already been completed, for example through previous submissions we have made to the Parliamentary Joint Committee on Intelligence and Security <sup>16</sup> , Parliamentary Joint Committee on Law Enforcement and the UN Special Rapporteur on Right to Privacy <sup>17</sup> .
P12	Any standards applicable in Australia relating to AI-informed decision-making should incorporate guidance on human rights compliance.	Support in principle. However, this should be achieved in the form of an enforceable federal human rights framework that properly ratifies the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.
P13	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 coordination of public and private initiatives in this area and consult widely, including with those whose human rights are likely to be	Support in principle, further consultation on specific certification scheme required.  We also note the absence of enforceable human rights at the federal level and believe further work in this area is required to provide a strong foundation for regulation and 'by design' approaches. This could be achieved in the form of an enforceable federal human rights framework that properly ratifies the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

<sup>15</sup> Mann, Monique & Smith, Marcus 2017, 'Automated Facial Recognition Technology: Recent Developments and Approaches to Oversight', University of New South Wales Law Journal, vol. 40, no. 1, pp. 121-145.

<sup>16</sup> Submission available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Identity-Matching2019/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Identity-Matching2019/Report).

<sup>17</sup> See: Mann, M., Molnar, A., Warren, I. & Daly, A. (2018). Submission to the Parliamentary Joint Committee on Law Enforcement inquiry into new Information Communication Technologies and the challenges facing law enforcement agencies. Australian Privacy Foundation, Sydney; Mann, M. (2018). Privacy in Australia: Brief to UN Special Rapporteur on Right to Privacy. Australian Privacy Foundation, Sydney; Galloway, K., Mann, M. & Goldenfien, J. (2018). Submission to the Parliamentary Joint Committee on Intelligence and Security: Review of the Identity-Matching Services Bill 2018 and the Australian Passports Amendment (Identity-Matching Services) Bill 2018. Australian Privacy Foundation, & Future Wise, Australia.

	significantly affected by AI-informed decision making.	
P14	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, should expressly include a human rights impact assessment.	Support in principle. The AHRC should look to the recent proposals made by the European Commission regarding "high-risk" applications of AI in certain sectors (e.g. transport, public sector, criminal justice, health) <sup>18</sup> and also applications with human rights impacts.  Further we express caution about the use of "AI ethics" terminology and suggest rather a focus on enforceable legal protections.
QE	In relation to proposed human rights impact assessment tool in Proposal 14:  (a) When and how should it be deployed? (b) Should completion of a human rights impact assessment be mandatory, or incentivised in otherways? (c) What should the consequences be if the assessment indicates a high risk of human rights impact? (d) How should a human rights impact assessment be applied to AI-informed decision-making systems developed overseas?	We suggest that the AHRC learn from the experience of privacy impact assessments. <sup>19</sup> The human rights impact assessment should be mandatory.  If there is a high risk of human rights impact then the AI application should not proceed, or there should be sufficient protections in place (see for example the recent European Commission proposals for 'high risk' AI applications). Human rights impact assessments should be relevant to the Australian context.  We repeat our responses to Q11 to 14.
P15	The Australian Government should consider establishing a regulatory sandbox to test AI-informed decision-making systems for compliance with human rights.	Support in principle.  We require further detail about the parameters of the sandbox, and how AI tools developed within sandbox may impact upon third parties, and what remedies and powers will be available to suspend or intervene in the development of a project that is considered to be a legitimate threat to human rights.

<sup>18</sup> See: European Commission (2020). On Artificial Intelligence – A European approach to excellence and trust. White Paper. Brussels: European Commission; see also: Commonwealth Ombudsman Automated decision-making better practice guide available at: [https://www.ombudsman.gov.au/better-practice-guides/automated-decision-guide?fbclid=IwAR02xij87kFmAOFroVFJKWgfl8zJFdV9a3sXWv\\_9hpM\\_OoXq680YvtentmM#sec-6](https://www.ombudsman.gov.au/better-practice-guides/automated-decision-guide?fbclid=IwAR02xij87kFmAOFroVFJKWgfl8zJFdV9a3sXWv_9hpM_OoXq680YvtentmM#sec-6).

<sup>19</sup> See for example Australian Privacy Foundation advice regarding PIAs: <https://www.privacy.org.au/Papers/PS-PIA.html>; see also: See also: Clarke R. (2009) 'Privacy Impact Assessment: Its Origins and Development' Computer Law & Security Review 25, 2 (April 2009) 123-135, PrePrint at <http://www.rogerclarke.com/DV/PIAHist-08.html>.

		<p>In any event, we submit that any person(s) directly or indirectly subject to the sandbox must be aware of their involvement and expressly consent to such involvement on an informed basis.</p> <p>If conducted properly, a regulatory sandbox may be a powerful way to bring innovators, regulators, industry and civil society together so that they can better understand one another's concerns. Theoretically, a regulatory sandbox will facilitate the private sector's understanding of and compliance with regulation while also ensuring that regulators better understand cutting edge technology so that regulation is designed in a manner that does not needlessly stifle innovation.</p>
QF	<p>What should be the key features of a regulatory sandbox to test AI-informed decision-making systems for compliance with human rights. In particular:</p> <p>(a) What should be the scope of the operation of the regulatory sandbox, including criteria for eligibility to participate and the types of system that would be covered?</p> <p>(b) What areas of regulation should it cover eg. human rights or other areas as well?</p> <p>(c) What controls or criteria should be in place prior to a product being admitted to the regulatory sandbox?</p> <p>(d) What protections or incentives should support participation?</p> <p>(e) What body or bodies should run the regulatory sandbox?</p> <p>(f) How could the regulatory sandbox draw on the expertise of relevant regulatory and oversight bodies, civil society and industry?</p> <p>(g) How should it balance competing imperatives eg, transparency and protection of trade secrets?</p> <p>(h) How should the regulatory sandbox be evaluated?</p>	<p>We require further detail about the parameters of the sandbox, and how AI tools developed within sandbox may impact upon third parties, and what remedies and powers will be available to suspend or intervene in the development of a project that is considered to be a legitimate threat to human rights.</p> <p>In any event, we submit that any person(s) directly or indirectly subject to the sandbox must be aware of their involvement and expressly consent to such involvement on an informed basis.</p> <p>If conducted properly, a regulatory sandbox may be a powerful way to bring innovators, regulators, industry and civil society together so that they can better understand one another's concerns. Theoretically, a regulatory sandbox will facilitate the private sector's understanding of and compliance with regulation while also ensuring that regulators better understand cutting edge technology so that regulation is designed in a manner that does not needlessly stifle innovation.</p>

P16	<p>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 data points and professionals designing and developing AI-informed decision-making.</p>	<p>Support in principle, further consultation on specifics of National Strategy required as per proposal 1 above.</p>
P17	<p>The Australian Government should conduct a comprehensive review, overseen by a new or existing body, in order to:</p> <ul style="list-style-type: none"> <li>(a) Identify the use of AI in decision making by the Australian Government</li> <li>(b) Undertake a cost-benefit analysis of the use of AI, with specific reference to the protection of human rights and ensuring accountability</li> <li>(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</li> <li>(d) Identify whether and how those impacted by a decision are informed of the use of AU in that decision-making process, including by engaging in public consultation that focuses on those most likely to be affected.</li> <li>(e) Examine any monitoring and evaluation frameworks for the use of AI in decision-making</li> </ul>	<p>Strongly support.</p>
P18	<p>The Australian Government rules on procurement should require that, where government procures an AI-informed decision-making system, this</p>	<p>Strongly support. There should be consideration on the requirement to make software and algorithms transparent, especially</p>

	system should include human rights protections.	those used in public sector contexts (i.e. criminal justice, social security). <sup>20</sup>
Part C: National Leadership on AI		
P19	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....	Support in principle, although note there is the possibility of confusion and duplication of roles such as the existing state and federal Privacy and Information Commissioners, AHRC and the present focus on human rights and technology, the e-Safety Commissioner, the work of Australian Competition and Consumer Commission in digital platforms, and also new Digital Technology taskforce in Prime Minister and Cabinet. There is also an issue of regulatory capacity and sufficient funding of regulators in order to ensure that they are able to discharge their statutory functions.
Part D: Accessible Technology		
P20	Federal, state, territory and local governments should commit to using Digital Technology that complies with recognised accessibility standards, currently WCAG2.1 and Australian Standards EN 301 549, and successor standards. To this end, all Australian governments should: <ul style="list-style-type: none"> <li>(a) Adopt an accessible procurement policy, promoting the procurement of goods, services and facilities that use Digital Technology in a way that meets the above accessibility standards. Such a policy would also favour government procurement from entities that implement such accessibility standards in their own activities.</li> <li>(b) Develop policies that increase the availability of accessible communications services such as Easy English versions and human customer support.</li> </ul>	Support.

<sup>20</sup> See also: [https://www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_ip\\_ai\\_2\\_ge\\_20/wipo\\_ip\\_ai\\_2\\_ge\\_20\\_1.pdf](https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_2_ge_20/wipo_ip_ai_2_ge_20_1.pdf).

P21	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.	Support.
P22	The Australian Government should amend the Broadcasting Services Act 1992 (Cth) to require national broadcasting services, commercial broadcasting services, and subscription broadcasting services to: <ul style="list-style-type: none"> <li>(a) Audio describe content for a minimum of 14 hours per week for each channel, with annual increases</li> <li>(b) Increase the minimum weekly hours of captioned content on an annual basis.</li> </ul>	Support in the same manner as the Marrakesh Treaty provides for access to content.
P23	Standards Australia should develop the 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.	Support as above.
P24	The National Broadband Network should undertake economic modelling for the provision of a concessional wholesale broadband rate for people with a disability who are financially vulnerable.	Support as above.
QG	What other measures could the private sector take to eliminate barriers to accessibility related to the affordability of Digital Technologies for people with a disability?	No response provided; however, we support this in the same manner as the Marrakesh Treaty provides for access to content.
P25	The Council of Australian Governments Disability Reform Council should:	No response provided; however, we support these in the same manner as the Marrakesh Treaty provides for access to content.

	<p>(a) 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</p> <p>(b) Include policy action to improve access to digital and other technologies for people with a disability as a priority in the next National Disability Strategy.</p>	
P26	<p>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 Academics should undertake consultation on how to achieve this aim most effectively and appropriately within the tertiary and vocational sector.</p>	<p>Support in principle.</p>
QH	<p>What other tertiary or vocational courses, if any, should include instruction on 'human rights' by design?</p>	<p>Relevant courses should include instruction on human rights by design. This area is relevant to many disciplines and fields. Certainly technical disciplines such as STEM units should include content on human rights. Also Law and HASS units should also cover human rights and technology, depending on specific contextual area of application (for example digital media and communications, design, urban studies and geography, criminology, social work, sociology, public administration etc).</p>
P27	<p>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>Support in principle.</p>



P28	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.	No response provided; however, we support this in the same manner as the Marrakesh Treaty provides for access to content.
P29	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 a 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.	No response provided; however, we support this in the same manner as the Marrakesh Treaty provides for access to content.
Q1	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?	We respectfully reserve comment until the effectuation of the proposal at P29.

## **About Us**

### **Australian Privacy Foundation**

The Australian Privacy Foundation is the primary association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

See more: <https://privacy.org.au/>

### **The Queensland Council for Civil Liberties**

The Queensland Council for Civil Liberties (QCCL) is a voluntary organisation concerned with the protection of individual rights and civil liberties. It was founded in 1966 in order to protect and promote the human rights and freedoms of Queensland citizens. Since then the QCCL has worked ceaselessly to promote civil liberties. QCCL works towards a society in which the human rights enshrined in such documents as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Australia is signatory, are enjoyed by all Queenslanders and indeed Australian citizens.

See more: <https://qccl.org.au/>

### **Electronic Frontiers Australia**

Electronic Frontiers Australia Inc. is a non-profit national organisation that has been promoting and protecting digital rights (civil liberties) in Australia since it was established in January 1994. EFA serves to protect and promote the civil liberties of users of computer based communications systems and of those affected by their use.

See more: <https://www.efa.org.au/>

### **Liberty Victoria**

Liberty Victoria is one of Australia's leading civil liberties organisations - working to defend and extend human rights and freedoms in Victoria since 1936.

See more: <https://libertyvictoria.org.au/>

### **New South Wales Council for Civil Liberties**

The NSW Council for Civil Liberties was founded in 1963 with the aim of protecting Australian's civil liberties and rights against the encroachment of government or corporations. We are a politically non-partisan, secular and totally volunteer organisation. We are now one of Australia's leading human rights and civil liberties organisations

See more: <https://www.nswccl.org.au/>