Submission to the Senate Select Committee on Adopting Artificial Intelligence

10 May 2024

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About ACOSS

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector.

ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas.

Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

Summary

This submission makes recommendations focused on ensuring the use of automation and artificial intelligence (AI) in government services is ethical and addresses the needs of people experiencing disadvantage. ACOSS recommends the following:

Design and Development

1. Any automation or AI technology used in government services that engages a person's basic needs or rights, must be co-designed with people affected by the technology.
2. Impact assessments and testing must occur prior to the use of automation or AI technology by government, to help ensure the technology does not adversely affect a person's basic needs and rights.

Implementation

3. Any government decision that adversely affects a person and engages a person's basic needs or rights must be made by a human being, and not by automation or AI technology.
4. Decision-making in government services that engages a person's basic needs or rights, including any decision-making using automation or AI technology in contravention of recommendation 3, must be reviewable and afford procedural fairness.
5. The government must ensure that automation and AI technology used in government protects privacy, and it must not use biometric AI technology

in government services until a legal framework to safeguard privacy and basic rights has been established and supported by relevant stakeholders.

6. The government must ensure that government services using automation or AI technology are accessible for all people, and that non-digital options are readily available for engaging with government services.

Accountability

7. The government must ensure that harms arising from uses of automation and AI technology in government services are redressed and those responsible for harms are held accountable.

8. The government must establish an oversight function that monitors and publishes information on the use of automation and AI technology by government to allow for public scrutiny, and that engages in continuous evaluation and improvement to ensure the technology does not adversely affect basic needs or rights.

Design and Development

1. AI technology must be co-designed with people affected

Any government use of automation or AI technology that impacts people's basic needs or rights should be developed through a genuine co-design process with: people affected by the technology, advocacy and community sector organisations representing people affected, and multidisciplinary experts.

The UN Special Rapporteur on Extreme Poverty and Human Rights has said:

> predictive analytics, algorithms and other forms of artificial intelligence are highly likely to reproduce and exacerbate biases reflected in existing data and policies. In-built forms of discrimination can fatally undermine the right to social protection for key groups and individuals. There therefore needs to be a concerted effort to identify and counteract such biases in designing the digital welfare state. This in turn requires transparency and broad-based inputs into policymaking processes. The public, and *especially those directly affected by the welfare system*, need to be able to understand and evaluate the policies that are buried deep within the algorithms.[1]

Co-design should continue throughout all different stages of the development of the AI technology to be used in the government service, including research, design, data input, training and piloting of the model. Co-design should be conducted in a way that ensures genuine participation of the stakeholders

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[1] United Nations Special Rapporteur on Extreme Poverty and Human Rights (2019), *Digital Technology, Social Protection and Human Rights: Report*, available online, accessed 10 May 2024, p. 22 (emphasis added).

mentioned earlier, including through appropriate forms of communication, timeframes, and resourcing. Co-design of this kind can help detect and address problems in an automation and AI technology used in government services before it does harm.

The Commonwealth Ombudsman has provided guidelines on the design of automated systems and emphasises the importance of including multidisciplinary experts, people affected by the system (especially vulnerable people), and provides examples of how stakeholder input might occur at different stages of the co-design process.[2] The government should develop and implement more detailed guidelines on how best to involve people affected in the co-design of automation and AI technology in government services.

Additional funding should be provided to advocacy and community sector organisations to provide them with the time and resources to properly represent and facilitate the participation of people affected by AI technology. Resourcing and training are required to build the skills of a workforce to effectively co-design AI technology to ensure it does not adversely affect basic needs or rights. This includes building the capacity and capability of advocacy and community sector organisations representing people affected, enabling them to engage further in co-design of AI technology including in more technical stages of development. This kind of additional resourcing is particularly important given the speed at which AI technologies are being developed and implemented.

In line with our recommendations, the Australian Human Rights Commission (AHRC) has recommended the establishment of an AI Safety Commissioner which provides independent expertise on AI and human rights for Australian policy makers, and which would be required to regard the impact of the development and use of AI on vulnerable and marginalised people, and to draw on diverse expertise.[3] The AHRC also recommends that government procurement law, policy, and guidance should be amended 'to require that human rights are protected in the design and development of any AI-informed decision-making tool procured by the Australian Government.'[4]

The Robodebt Royal Commission also recommended that 'Services Australia and DSS should introduce mechanisms to ensure that all new programs and schemes are developed with a customer centric focus, and that specific testing is done to ensure that recipients are at the forefront of each new initiative.'[5] All government services, including in their use of automation or AI technology,

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[2] Commonwealth Ombudsman (2019), *Automated Decision-making: Better Practice Guide*, available online, accessed 9 May 2024, pp. 17-19.

[3] Ibid recommendations 22 and 23.

[4] Australian Human Rights Commission (2021), *Human Rights and Technology: Final Report*, available online, accessed 9 May 2024, recommendation 16.

[5] Royal Commission into the Robodebt Scheme, *Report,* available online, accessed 9 May 2024, Recommendation 23.3.

should be designed with and to best serve those affected by the service, especially those experiencing disadvantage.

Recommendation 1: Any automation or AI technology used in government services that engages a person's basic needs or rights, must be co-designed with people affected by the technology.

2. Impact assessments and testing must occur prior to the use of AI technology

The government should be required to ensure that impact assessments and testing occurs prior to the use of automation or AI technology in government services, and the technology should not be used if it is assessed to adversely impact basic needs or rights.

This assessment and testing should be conducted in reference to publicly available standards whose objectives are to uphold people's basic needs and rights, especially those experiencing disadvantage. These standards should be co-designed with people affected, advocacy and community sector organisations representing people affected, and multidisciplinary experts.

The assessment and testing should also be conducted independently, and the process and results of the assessments and testing should be made public to allow public scrutiny. Consideration should be given to ensuring the impact assessment occurs at different stages of the development and the AI technology, including its early design, training, and piloting.

The government should undertake work to evaluate the different standards for impact assessment that have been proposed, and co-design a framework for the consequences that should attach to varying assessments of impacts. Some have taken a risk-based approach to impact assessment and regulation, including approaches taken in Canada, the European Union and the Australian Government in a recent publication.[6] For example, Canada requires an impact assessment of automated decision-making systems, which considers the risk of impacts on rights, health or well-being of people, and requires certain safeguards such as human intervention where risks are high.[7]

Meanwhile, the AHRC has proposed a human rights-focussed approach to impact assessment of AI technology, which includes assessment of whether the AI-informed decision-making system: complies with Australia's human rights law obligations, will meet expert guidance on automation in discretionary decisions, provides for appropriate review by human decision makers, and is

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[6] Australian Government, Department of Industry, Science and Resources (2024), *Safe and responsible AI in Australia Consultation: Australian Government's Interim Response*, available online, accessed 10 May 2024, pp. 13-14.

[7] Government of Canada (2019), *Directive on Automated Decision-Making*, available online, accessed 10 May 2024.

authorised and governed by legislation.[8] These impact assessments could build on the strengths of similar existing processes in parliamentary human rights compatibility assessments, privacy assessments, and modern slavery due diligence.[9]

To be useful, the standards for assessment could follow but need to be more detailed than existing high-level guiding principles, such as Australia's AI Ethics Principles,[10] or the OECD's AI Principles (updated in May 2024).[11] The Commonwealth Ombudsman's guidelines for automated decision-making could be an example and a starting point for the kind of more detailed features needed in standards for impact assessment.[12] For example, these guidelines provide guidance on managing risks of automated decision-making in cases of discretionary decisions, and similar considerations apply in AI technology.[13]

Recommendation 2: Impact assessments and testing must occur prior to the use of automation or AI technology by government, to help ensure the technology does not adversely affect people's basic needs and rights.

Implementation

3. Any adverse decision affecting basic needs or rights requires a human decision-maker

ACOSS supports the principle that any government decision that adversely affects a person and engages a person's basic needs and rights must be made by a human being, and not by automation or AI technology. For example, a decision about social security debt, or the reduction or suspension of social security payments, should be made by a human.

Adhering to this principle, in combination with our other recommendations, helps enable the human decision-maker and the person adversely affected to identify and raise concerns to help avoid particularly non-sensible, unjust or cruel decisions, in a way that is not possible where the decision is made by automation or AI technology.

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[8] Australian Human Rights Commission (2021), *Human Rights and Technology: Final Report*, available online, accessed 9 May 2024, recommendation 2.

[9] Ibid p.59.

[10] Department of Industry, Science and Resource, *Australia's AI Ethics Principles*, available online, accessed 9 May 2024.

[11] OECD AI Policy Observatory (2024), *OECD AI Principles Overview*, available online, accessed 10 May 2024.

[12] Commonwealth Ombudsman (2019), *Automated Decision-making: Better Practice Guide*, available online, accessed 9 May 2024.

[13] Ibid pp. 9-10.

For example, adhering to the principle could help prevent automation errors and their adverse impacts in the social security system, such as where a person's payments were affected by an automated system wrongly claiming they were dead, or where a person received nine automated letters in a single day due to error.[14] In cases like these, Economic Justice Australia has observed that 'it is often clear that no human has looked at a decision or communication, because the decision is obviously illogical or completely inaccurate'.[15] Similarly, involving a human decision-maker would help avoid adverse decisions in government services arising from errors in the use of AI technology more broadly.

Human involvement in automated decision-making is already required in some jurisdictions and in some circumstances. The EU General Data Protection Regulation provides an individual right not to be subject to a decision based only on automated processing, and provides the option for a person to obtain human intervention in which they can contest the decision.[16] In Canada, it is a requirement that certain 'high risk' automated decision-making by government involve human review, where risk is determined by reference to impact on factors including rights, health, and economic interests of individuals or communities.[17] The justification for requiring a human decision-maker instead of automation in these contexts applies with similar force in relation to AI technology.

In line with our recommendation, the South Australian Parliament's Select Committee on Artificial Intelligence has recommended that 'with the increase in AI assisted programs used in work tasks, a human interface must be maintained as oversight, with AI's role in decision making used as a tool with humans remaining accountable for the application of those tools.'[18]

Recommendation 3: Any government decision that adversely affects a person and engages a person's basic needs or rights must be made by a human being, and not by automation or AI technology.

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[14] Sarah Sacher, Economic Justice Australia (2023), *Spoiler Alert: Our Automation in Social Security Project*, available online, accessed 10 May 2024.

[15] Ibid.

[16] European Union (2016), *General Data Protection Regulation*, available online, accessed 10 May 2024, article 22.

[17] Government of Canada (2019), *Directive on Automated Decision-Making*, available online, accessed 10 May 2024, Part 6.3.9.

[18] South Australia Parliament, Select Committee on Artificial Intelligence, *Report*, available online, accessed 10 May 2024, recommendation 5.

4. Decision-making using AI technology must be reviewable and procedurally fair

Decision-making in government services that affects people's basic needs or rights, including any decision-making using automation or AI technology in contravention of recommendation 3, must provide the person affected by the decision with:

- reasons for the decision, including a reasonably comprehensible and technically accurate explanation of how artificial intelligence has been used in the decision,
- a reasonable opportunity to challenge the decision through a procedurally fair process, in which the person is informed about and supported to understand how to challenge the decision, and
- information about supports available to the person to assist them in challenging the decision, or about how to access other relevant options or support services where the decision is adverse to the person.

These should be provided to the person in a way that ensures the person affected understands the relevant information, and has a human available to speak with to ask any questions and receive support.

Economic Justice Australia has found that 'there is a lack of explanation for adverse decisions [made using automated decision-making], which undermines appeal rights, and places the burden on the individual to identify and obtain relevant evidence'.[19] Similar issues could arise in the use of AI technology in government service decision-making more broadly, and our recommendations would help address these.

The effect of an adverse decision engaging basic needs or rights, including decisions made using automation or AI technology, should also be suspended while under review and safeguards should be in place to ensure the review system itself is not punitive. In the context of social security, for example, ACOSS has recommended suspending debt recovery while under review, abolishing the 10% recovery fee on debts, abolishing interest charges on debts, reinstating the six-year limitation on debt recovery, and communicating well with people prior to recovering debt.[20]

Others' recommendations align with ours. The Commonwealth Ombudsman has recommended that automated decision-making processes should be understandable, provide appropriate reasons for decision, and allow review of

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[19] Sarah Sacher, Economic Justice Australia (2023), *Spoiler Alert: Our Automation in Social Security Project*, available online, accessed 10 May 2024.

[20] Australian Council of Social Service (2023), *Submission to the Robodebt Royal Commission,* available online, accessed 9 May 2024, pp. 6-7.

the decision.[21] Similar principles should apply to any AI technology used in government services decision-making.

In addition, the AHRC has recommended that any affected person is notified when AI is used in government decision-making, and provided information on how they can challenge the decision.[22] The AHRC also recommends that administrative decisions should not be made, including through the use of automation or AI, if the decision-maker cannot generate reasons or explanation for an affected person, and that there should be rights to merits review before an independent tribunal for any AI-informed administrative decision.[23]

Similarly, the Robodebt Royal Commission recommended that:

> Where automated decision-making is implemented:
>
> - there should be a clear path for those affected by decisions to seek review
> - departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works*…*[24]

The government should follow this recommendation in relation to all government services that use automation and AI technology, as similar considerations apply.

Finally, we note that the ARC Centre of Excellence for Automated Decision-Making and Society is undertaking a research project to design automated tools to support welfare rights advocacy, including to support a person to challenge an adverse social security decision by more efficiently providing the person affected and their advocates with information used in making the decision.[25] This is worth further consideration by government.

Recommendation 4: Decision-making in government services that engages a person's basic needs or rights, including any decision-making using automation or AI technology in contravention of recommendation 3, must be reviewable and afford procedural fairness.

[21] Commonwealth Ombudsman (2019), *Automated Decision-making: Better Practice Guide*, available online, accessed 9 May 2024, pp. 25-26.

[22] Australian Human Rights Commission (2021), *Human Rights and Technology: Final Report*, available online, accessed 9 May 2024, recommendation 3.

[23] Ibid recommendations 5 and 7.

[24] Royal Commission into the Robodebt Scheme, *Report,* available online, accessed 9 May 2024, Recommendation 17.1.

[25] ARC Centre of Excellence for Automated Decision-Making, *Designing Automated Tools to Support Welfare Rights Advocacy,* available online, accessed 9 May 2024.

5. AI technology must protect privacy, especially biometric technologies

The government must ensure AI technology is designed, developed and implemented to meet all existing privacy standards and requirements. The Commonwealth Ombudsman has provided guidance on existing privacy requirements related automated decision-making,[26] and the government should provide clarity on how these privacy requirements apply to the use of AI technology in government services.

The government must also not use biometric AI technology in government services, until legal framework to properly safeguard privacy and basic rights has been established and supported by stakeholders, including people affected. The AHRC has made a similar recommendation not to use biometric technology in decision-making that has a significant effect on people or where there is a high risk to human rights (such as policing and law enforcement), until there is satisfactory regulation in place to protect human rights.[27]

The risks to privacy of AI and biometric technology are well documented, such as the risks associated with the use of facial recognition technology to surveil, assess and make decisions about people without adequate oversight, and the risks of AI technology errors disproportionately affect disadvantaged groups.[28] People should not be forced to choose between protecting their privacy, or accessing critical government services that use AI technology which may threaten their privacy.

The government should also consider introducing a statutory cause of action for serious invasion of privacy, as recommended by the Australian Law Reform Commission, its counterpart bodies in Victoria and NSW, the Australian Competition and Consumer Commission, and the AHRC.[29] As these bodies have noted, this reform is important due to the increasing ease and frequency of privacy invasions that may occur with new technologies including AI technology.[30]

Recommendation 5: The government must ensure that automation and AI technology used in government protects privacy, and it must not use biometric AI technology in government services until a legal framework to safeguard privacy and basic rights has been established and supported by relevant stakeholders.

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[26] Commonwealth Ombudsman (2019), *Automated Decision-making: Better Practice Guide*, available online, accessed 9 May 2024, pp. 11-16.

[27] Australian Human Rights Commission (2021), *Human Rights and Technology: Final Report*, available online, accessed 9 May 2024, recommendations 19 and 20.

[28] Ibid pp. 114-116.

[29] Ibid p. 121.

[30] Ibid.

6. Government services using AI technology must be accessible and non-digital options provided

The government should ensure that government services using automation and AI technology are made accessible for people with lower digital capability or diverse access needs, and that there are non-digital options readily available for people to engage with government services. This requires the government to provide adequate resourcing to support this digital accessibility and non-digital options, and to ensure accessibility is a key objective in the design of any technology it develops, funds, or procures.

Economic Justice Australia has found that people engaging with the social security system are being pushed into digital services regardless of their level of vulnerability, and that non-digital options are not readily available to them.[31] For example, one person experiencing homelessness lost weeks of their social security entitlement because of difficulty obtaining and completing a paper Jobseeker application, and they are now registered for myGov but cannot access the website.[32]

There are many reasons why a person may not be able to engage with an online or digital process, including not having access to relevant digital device, having lower digital literacy, or a legitimate preference against or distrust of certain digital platforms. A person should not be prevented or deterred from engaging with critical government services due to access barriers related to technology. This is especially important in the context of AI technology whose complexity can be particularly difficult to understand compared to other technology.

The Robodebt Royal Commission recommended that:

> Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve. That should entail…facilitating easy and efficient engagement with options of online, in person and telephone communication which is sensitive to the particular circumstances of the customer cohort, including itinerant lifestyles, lack of access to technology, lack of digital literacy and the particular difficulties rural and remote living…[33]

The government should follow this recommendation for accessibility in their use of any automation AI technology in government services more broadly.

Recommendation 6: The government must ensure that government services using automation or AI technology are accessible for all people, and that non-digital options are readily available for engaging with government services.

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[31] Sarah Sacher, Economic Justice Australia (2023), *Spoiler Alert: Our Automation in Social Security Project*, available online, accessed 10 May 2024.

[32] Ibid.

[33] Royal Commission into the Robodebt Scheme, *Report,* available online, accessed 9 May 2024, Recommendation 10.1.

Accountability

7. Harms from AI technology require accountability and redress

The government should ensure that harms arising from wrongful uses of automation and AI technology in government services are redressed and those responsible for harms are held accountable. Redress and accountability will take a different form depending on the government service and the circumstances of the harm caused, and should include redress for any non-material damage.

In the context of Robodebt for example, compensation has not been but should be provided for harms caused beyond repayment of monies plus interest, including, for example, psychological and physical harms, relationship breakdowns, and deterrence from engaging with government services and employment. There needs to be accountability for individuals and systems responsible for Robodebt. Accountability and redress are important in the context of automation and AI technology in which harms can occur at scale, quickly, and in distinctive ways, not previously seen.

The government should develop a legal framework for accountability and redress through genuine co-design process with people affected, and relevant advocacy and community sector organisations representing people affected. Other jurisdictions have relevant legal frameworks that should be considered by the government. For example, European Union General Data Protection Regulation includes an article affording the right to compensation where a person has suffered material or non-material damage as a result of non-compliance with the regulation.[34] Another example is the Dutch Government compensating victims of its Child Benefit scandal in which families were wrongly accused of benefit fraud and forced to repay money they did not owe.[35]

Our recommendations are mutually reinforcing. Accountability and redress would also be supported by a human decision-maker being involved and identifiable for decisions that adversely affect people's basic needs and rights (recommendation 3), and by ensuring that any decision-making affecting basic rights or needs are reviewable and procedurally fair (recommendation 4).

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[34] European Union (2016), *General Data Protection Regulation*, available online, accessed 10 May 2024, article 82.

[35] Joe Henley (2021), 'Dutch Government faces collapse over child benefit scandal', available online, accessed 10 May 2024.

Recommendation 7: The government must ensure that harms arising from uses of automation and AI technology in government services are redressed and those responsible for harms are held accountable.

8. AI technology should be continuously evaluated to guide reforms

ACOSS supports the establishment of a national oversight function that monitors and publishes information on the use of AI technology across government services to allow for public scrutiny, and engages in continuous evaluation and improvement to ensure the technology does not adversely affect basic needs or rights. Currently, information and policy development about the different uses of AI technology by government services are spread across multiple agencies and reports, and no well-communicated or dedicated government function for monitoring, evaluating and improving the use of AI technology across government.

The oversight function should be independent, multidisciplinary, and properly resourced to ensure capacity and capability to review the use of AI technology. For example, this government function would require expertise to evaluate and clearly communicate about complex AI technology such as algorithmic bias and biometric technology. The evaluations of automation and AI technology should be rigorous, publicised, and a mechanism should be established to ensure their recommendations are given serious attention to help improve regulation.

Others have made similar recommendations. The AHRC has recommended the establishment of an AI Safety Commissioner as an independent statutory office focused on promoting safety and protecting human rights in the development and use of AI in Australia.[36] Its proposed functions include working with regulators to build their AI expertise, monitoring and investigation of developments and trends in AI, providing independent AI and human rights expertise to policy makers, and issuing guidance on complying with laws and ethical requirements in the use of AI.[37]

In addition, the Commonwealth Ombudsman has said that 'agencies should monitor and evaluate the automated system on an ongoing basis. Consideration should be given to data sets such as complaints data that will inform the agency about how the automated system is operating'.[38] Similar practices should apply for the use of AI technology more broadly in government decision-making.

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[36] Australian Human Rights Commission (2021), *Human Rights and Technology: Final Report*, available online, accessed 9 May 2024, recommendation 22.

[37] Ibid.

[38] Commonwealth Ombudsman (2019), *Automated Decision-making: Better Practice Guide*, available online, accessed 9 May 2024, pp. 27.

The Robodebt Royal Commision also recommended consideration of 'establishing a body, or expanding an existing body, with the power to monitor and audit automated decision-making processes, having regard to their technical aspects and their impact in respect of fairness, the avoidance of bias, and client usability'.[39] It also recommended that 'when automated decision-making is implemented…business rules and algorithms should be made available, to enable independent expert scrutiny'.[40] Similarly, there is a need for a body to monitor and publish information about the use of AI technology in government services more broadly.

The government should also ensure that any federal oversight function is well-coordinated with any similar functions carried out at the state or territory level. In this regard, we note for example that the South Australian Parliament Select Committee on Artificial Intelligence has also recommended that the 'State government establish a permanent whole-of-government body dedicated to creating and implementing an AI framework based on accountability, transparency, societal and environmental well-being, universal access, fairness, safety and security, and human agency and oversight.'[41]

Recommendation 8: The government must establish an oversight function that monitors and publishes information on the use of automation and AI technology by government services to allow for public scrutiny, and that engages in continuous evaluation and improvement to ensure the technology does not adversely affect basic needs or rights.

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[39] Royal Commission into the Robodebt Scheme, *Report,* available online, accessed 9 May 2024, Recommendation 17.2

[40] Ibid recommendation 17.1.

[41] South Australia Parliament, Select Committee on Artificial Intelligence, *Report*, available online, accessed 10 May 2024, recommendation 13.