WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

Submission to the Long-Term Insights Briefing Pilot: AI, trustworthiness and public service delivery

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Women With Disabilities Australia (WWDA) has Special Consultative Status with the Economic and Social Council of the United Nations.

Disclaimer

ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

Women With Disabilities Australia (WWDA) Inc is the national Disabled People's Organisation (DPO) and National Women's Alliance (NWA) for women, girls, feminine identifying, and non-binary people with disability in Australia. As a DPO and an NWA, WWDA is governed, run, and staffed by and for women, girls, feminine identifying and non-binary people with disability.

WWDA uses the term 'women and girls with disability', on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.

WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social, and cultural rights. All WWDA's work is based on co-design with and participation of our members. WWDA projects are all designed, governed, and implemented by women and girls with disability.

Disabled People's Organisations (DPOs), also referred to as Organisations of Persons with Disabilities (OPDs) are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. DPOs/OPDs are organisations of people with disability, as opposed to organisations which may represent people with disability. The United Nations Committee on the Rights of Persons with Disabilities has clarified that States should give priority to the views of DPOs/OPDs when addressing issues related to people with disability. The Committee has further clarified that States should prioritise resources to organisations of people with disability that focus primarily on advocacy for disability rights and, adopt an enabling policy framework favourable to their establishment and sustained operation.[1]

WWDA'S SUBMISSION TO THE LONG-TERM INSIGHTS BRIEFING PILOT: AI, TRUSTWORTHINESS AND PUBLIC SERVICE DELIVERY

1. Women With Disabilities Australia (WWDA) welcomes the opportunity to respond to the Australian Government's Long-Term Insights Briefing Pilot: AI, trustworthiness and public service delivery.

2. WWDA commends the Government on its efforts to increase public trust in the delivery of Australian public services. One need only look to the submissions to, and reports of, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability to understand the ways in which government services have failed people with disability. For example, the Public Hearing Report for Public Hearing 12 on the experiences of people with disability in the context of the Australian Government's approach to the COVID 19 vaccine rollout, found that:

   The lack of transparency and the failure of the Australian Government to provide clear and easily comprehensible information about the rollout of vaccines to people with disability damaged the credibility and perceived trustworthiness of the Australian Government among many people with disability.[2]

3. People with disability experience a range of barriers to accessing and interacting with public services in Australia. According to the Federal Government's 2022 Annual Report into public trust in Australian public services, people with disability are less satisfied with all public services they use, and less likely to get what they need from them than people without a disability.[3] Satisfaction in service delivery is directly linked to trust.[4] In some circumstances, for people with disability, inability to trust in the government and public services, or inadequate support from those services, can be a matter of life or death.

4. WWDA welcomes the opportunity to contribute to the discussion on how the use of artificial intelligence will impact how people with disability experience Australian public services. While AI provides opportunities for advancing disability rights, in particular through the use of assistive technologies and the democratisation of knowledge and information, it also poses significant risks. As the United Nations Special Rapporteur on the rights of persons with disabilities has written in a recent report, while many of these risks are shared with other groups, some are unique to people with disabilities.[5] There is therefore an urgent need for consideration of the balance of risks and opportunities presented by AI in the context of disability.[6]

Factors influencing trust in the delivery of public services

5. Trust in public services is not only influenced by one's experiences with a public service (direct and indirect), but also by a range of demographic and socioeconomic factors.

6. Research by PwC recognises two categories of trust and its drivers: 'experience trust' and 'values trust'.[7] Drivers of experience trust include dependability and accountability in service delivery, influenced by responsiveness to need, satisfaction with services, timeliness, and the responsible use of personal information.[8] Drivers of values trust include transparency, honesty and fairness, influenced by ethical decision making, fair treatment and valuing the public interest.[9]

7. As was identified by the Federal Government's 2022 Annual Report, trust in Australian public services is lower for women and people with disability.[10] People who face overlapping marginalisation, including

women with disability, have significantly lower levels of trust in public services.[11] Among service agencies included in the Annual Report, respondents reported the lowest levels of trust in Centrelink and the National Disability Insurance Scheme.[12] Presumably, lower levels of trust among marginalised demographics reflect poor experiences with service delivery, and perceptions of unfair treatment or a lack of interest in the unique needs and experiences of marginalised communities. Trust among marginalised groups of people will not improve unless public services become more trustworthy for marginalised groups of people, by demonstrating fairness and responsiveness to their needs.

8. Negative experiences with public services may also contribute to a feeling of distrust in a population broader than those who directly interacted with that service. For example, the Australian Government's Robodebt Scheme has had devastating consequences for its direct victims, but has also impacted the trust of the general population. Although the Robodebt Scheme did not utilise AI (rather, automated decision-making), lessons can be gleaned from its impacts and from the findings of the Royal Commission into the Robodebt Scheme.

9. The Robodebt Scheme also disproportionately impacted people with disability, who reported a loss of faith in government service systems, alongside extreme emotional distress and trauma, suicidality and an exacerbation of both physical and mental health issues.[13] Advocates reported that 37% of the Robodebt victims they represented had a disability,[14] despite people with disability making up only 18% of the general population,[15] and despite reported attempts to exclude vulnerable people including people on the Disability Support Pension from the Robodebt Scheme.[16]

10. As noted in the Final Report of the Royal Commission into the Robodebt Scheme:

   The harmful effects of the Scheme were not confined to the raising of inaccurate or non-existent debts. The blunt instrument of automation used to identify and communicate the possibility of overpayment was inept at determining vulnerability. Empathy could not be programmed into the Scheme.[17]

11. In order to promote trustworthy public services, the APS must ensure that its services are human-centred and responsive to human need and the nuance of diverse experiences. This includes by increasing accessibility, clarity, responsiveness, and transparency. It also requires clear and tangible demonstrations of ethical decision-making, fairness and commitment to the public interest.

12. Trust must also be reciprocal. Negative attitudes towards marginalised people accessing government supports are widespread, and influence interactions with frontline workers. Individuals report that interactions with government services feel punitive and stigmatising, and are associated with shame.[18] This requires a change in how service systems interact with and perceive people accessing public services.

Possible consequences of using AI to deliver public services

13. When implemented responsibly, AI has the potential to improve service delivery. Enhancing the efficiency and responsiveness of public services may address some of the difficulties people with disability face when interacting with service systems. For example, systems that require long wait times or use a 'call-back' function may be prohibitive where a person with disability relies on support from another person to interact with the service, including a support worker who may finish their shift before a call is returned, or an interpreter who may charge in time-based increments. There is

therefore potential for AI to enhance the accessibility of public services, including by providing 24-hour support and availability, and instant translation to languages other than English, including Easy Read and Auslan. Further, certainty around timeframes for a response or decision is associated with greater trust and satisfaction in a service.[19]

14. Responsible use of AI may also improve data-driven policy making and evaluation, increasing capacity to analyse significant datasets, recognise patterns, and generate insights and predictions. The ethical and responsible use of AI has the potential to facilitate data-driven decision making that considers only the information that is relevant to the decision-making process. This can have great benefits for people with disability, by ensuring that irrelevant information is not factored in to a decision, thereby mitigating ableist and discriminatory attitudes. For example, in a recent study on the performance of Autistic and non-Autistic people in job interviews, non-Autistic candidates were more likely to succeed in video-based interviews because the format enabled observers to analyse candidates' social styles. [20] When social styles were removed from the equation, and candidates were evaluated on the basis of transcripts generated from their interviews, Autistic candidates out-performed non-Autistic candidates.[21] The study found that in the absence of social cues, the qualifications of Autistic candidates played a greater role in hiring decisions.[22] By removing irrelevant information from decision-making, AI-assisted processes and tools could reduce discriminatory practices.

15. However, the use of AI in the delivery of public services also has the potential to exacerbate existing inequities, and further marginalise under-represented demographics. The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has acknowledged the increase use of digital technologies, including AI, in 'determining everyday outcomes in employment, education, health care and criminal justice, which introduces the risk of systemised discrimination on an unprecedented scale'.[23] The risk of harm disproportionately impacts already marginalised demographics, and threatens to violate a range of human rights, including the rights to social security, an effective remedy, equality before the law, privacy, freedom from discrimination, education, and employment.[24] The use of AI within public services may also jeopardise a range of rights under the Convention on the Rights of Persons with Disabilities, as set out in a recent report of the United Nations Special Rapporteur on the rights of people with disabilities.[25]

16. Indeed, there is increasing evidence that AI does not always achieve decision-making that is free from discrimination. While the use of AI can assist to address biases and prejudices that infiltrate human decision-making, it can also perpetuate such prejudices due to algorithmic bias.[26] Algorithmic bias may arise due to the design of the AI-based tools or systems used, as well as the data being used.[27] Where the data fed in to an AI-powered tool or system is non-representative, incorrect or biased, outcomes will reflect that data and will be impacted by the same systems of oppression that influence human-decision making and marginalise certain demographics. This will inevitably disadvantage women with disability who are so often under-represented in data collection. For example, AI-powered recruitment tools have been found to favour male applicants for technical roles, because the data fed into the tools has reflected a historically male technical workforce.[28] Similarly, video interview assessment systems that score job candidates based on speech and facial analysis may penalise people with disability who have facial features or exhibit patterns of speech and non-verbal communication that differ from the majority.

17. Moreover, automation bias (the over-reliance on automated systems even in the presence of contradictory information) may allow these prejudices to operate insidiously, obscured by a perception

that an automated decision is somehow objective or more correct than a human decision. As the United Nations High Commissioner for Human Rights has reported, AI-powered systems used within the criminal justice system to predict criminal behaviour have been found to undermine the presumption of innocence.[29] Indeed, the Robodebt Scheme saw a reversal of the onus of proof and the presumption of innocence whereby victims of the Scheme were required to prove that the debt assessment they had received was incorrect.[30] This was at the root of much of the harm caused by the Scheme.

18. The increased use of AI within public service delivery may also reinforce and exacerbate disadvantage due to digital exclusion. The right to equal access to technology is enshrined in Article 9 of the Convention on the Rights of Persons with Disabilities,[31] and is an enabling right, or 'a vital precondition for the effective and equal enjoyment of civil, political, economic, social and cultural rights by persons with disabilities'.[32] However, people with disability continue to experience barriers to digital inclusion both materially (in access to digital goods and services), and functionally (in use of digital goods and services). When government agencies employ new technologies, disparities in digital literacy and accessibility can mean that those who rely on these services experience the greatest disadvantage.[33] For example, increased digitisation of government services has already posed barriers for people with intellectual disability who may require human customer support.[34] Digital inclusion will not be realised unless all aspects of access, affordability and digital literacy are addressed.[35] This is a prerequisite to the human-centred and non-discriminatory design and implementation of AI-assisted public services, and to the fulfilment of Australia's human rights obligations. Indeed, the United Nations Committee on the Rights of Persons with Disabilities has stated that 'it is unacceptable to use public funds to create or perpetuate the inequality that inevitably results from inaccessible services and facilities'.[36]

What specific aspects or areas of public service delivery will the use of AI will impact?

19. Artificial intelligence has the potential to impact various aspects of public service delivery. Depending on its use and regulation, it has the capacity to either promote or breach the human rights of people with disability. This includes in relation to the following areas:

Consumer experience: With appropriate design and implementation, the use of AI has the potential to increase the accessibility and efficiency of services and supports for consumers. However, overreliance on artificial intelligence in service provision can have human rights implications for people with disability. If AI-powered technologies are used to reduce or eliminate the need for human supports, people with disability will be placed at risk of mental health decline, increased segregation and social isolation.[37]

Administrative burden: By automating repetitive tasks, including document processing and data entry, AI systems may reduce administrative burdens for both consumers and service staff. However, if AI-powered technologies are not accessible (materially or functionally), this may increase administrative burdens for people with disability or exclude people with disability entirely.

Workforce participation: Outsourcing certain functions to AI-based systems may result in reduced workforce participation and disproportionately impact people with disability. It is crucial that the use of AI does not replace human workers, but rather assists human workers to provide services more efficiently and effectively, by streamlining processes.

Provision of information: With the use of AI, information may be sought and disseminated instantly and when consumers require information. This has important and positive consequences for participation, informed decision-making, and agency. However, without human-centred and accessible design and implementation, increased use of AI and digital technologies will serve to deny marginalised communities access to information.

Data collection and analysis: AI systems may enhance the breadth and efficiency of data collection and analysis. This may assist to address the dearth of data disaggregated by gender and disability in Australia. However, data collection must be responsible and genuinely representative.

What should the public service do to preserve trust when using AI?

20. It is important to acknowledge that trust in public services need not only be preserved, but rebuilt. As noted in the Final Report of the Royal Commission into Robodebt Scheme:

    The Scheme's systemic failures, the effects on individuals and the consequences for the broader community have undoubtedly corroded public trust in government and its institutions. The effects of this are lasting; perhaps irreversible.[38]

21. Any reform of the public service's use of AI or automation must acknowledge the context of immense distrust and devastation arising from the Robodebt Scheme. For some victims of the Robodebt Scheme, the unethical and irresponsible use of automated decision-making was deadly.

22. The Australian Government should ensure that any use of AI and automation is limited to processes deemed appropriate, following comprehensive human rights impact assessment. As set out in the Commonwealth Ombudsman's Automated Decision-making Better Practice Guide:

    Automation of any part of a process is not suitable where it would:

    - *Contravene administrative law requirements of legality, fairness, rationality and transparency.*
    - *Contravene privacy, data security or other legal requirements (including human rights obligations).*
    - *Compromise accuracy in decision-making.*
    - *Significantly undermine public confidence in government administration.[39]*

23. In order to remedy distrust among the Australian public, the public service must also ensure that it implements the recommendations of the Final Report of the Royal Commission into the Robodebt Scheme. This includes by ensuring that systems are designed with humans at the centre, and are subject to human oversight, human accountability, and human scrutiny. As identified by the Final Report of the Royal Commission into Robodebt Scheme:

    A trustworthy automated system is a system containing automation that is ethical, lawful and technically robust, coupled with good governance and risk management. To achieve trustworthiness, the system must be designed with human agency at its centre.[40]

24. As described by the Australian Human Rights Commission (AHRC), accountability involves both corrective and preventative functions: it must include continual improvement and identification of risk,

as well as access to remedies.[41] The AHRC has identified the following five questions to determine whether an AI decision-making system is accountable:

- *Does the AI-informed decision-making system produce lawful decisions?*
- *Is the decision making transparent?*
- *Can reasons or an explanation be provided for the decisions?*
- *Is it clear who is legally responsible for a decision?*
- *Is there appropriate human oversight and review?[42]*

25. One of the most effective safeguards and methods to preserve accountability is to ensure that AI-assisted processes and decisions are ultimately subject to human intervention.[43]

26. To ensure that AI-assisted processes and decisions are contestable, the principles of administrative law, and anti-discrimination frameworks, must also clearly apply. This requires that these legislative frameworks be clarified to explicitly extend to such decisions, ensuring that there are clear avenues for review, appeal and redress. As critics have observed, Australian anti-discrimination frameworks currently construct discrimination by reference to human decision-makers,[44] and it is unclear whether a decision arising from an automated process is a reviewable decision for the purposes of judicial review.[45] A failure to ensure that AI-assisted decisions are within the scope of anti-discrimination frameworks will disproportionately impact women with disability, who are at risk of multiple discrimination at the intersection of their identities, and could be without recourse.

27. Public services must also ensure that there are adequate protections for privacy and data. People with disabilities are more vulnerable to privacy violations, may be more likely to have public services record health and other sensitive information, and are at greater risk of exploitation, including fraud.

28. As recommended by the Deloitte Report to the Royal Commission on the use of data and automation in the Robodebt Scheme:

    For automation to be considered trustworthy, it must be ethical, lawful and technically robust. It is tightly coupled with good governance and risk management, and acknowledges the unique risks presented by automated systems with a focus on human-centricity, commitment to the service of humanity and common good, and the goal of improving human welfare and freedom.[46]

29. Ethical and responsible oversight of AI must involve more than risk-based regulation. Regulation must be underpinned by, and give effect to, human rights principles. As the United Nations High Commissioner for Human Rights has described, human rights principles must inform all stages of the AI life cycle, including the collection and selection of data, and the design, development, deployment and ongoing monitoring of models, products, tools and services.[47]

30. As described by the Oxford Handbook of AI Ethics, embedding 'human rights by design' to AI-powered systems involves:

- *Design in compliance with international human rights laws and treaties, including through public consultation;*
- *Regular evaluation and assessment for human rights compliance throughout the life cycle.*
- *Independent oversight of human rights compliance, with investigation and sanction functions;*

- *Auditability and traceability to ensure that AI systems can be meaningfully reviewed for human rights compliance.[48]*

31. This is consistent with research by the University of Queensland which found that 80% of Australians believe that an independent body conducting regular reviews of the ethics of AI systems would increase their trust in AI systems.[49] The independence of regulation is crucial to ensuring impartiality, and to address the low levels of trust among the Australian public: one third of Australians report no or little confidence in government to develop, use or regulate AI.[50] Another Australian study found that the majority of people surveyed would have more trust in automated government decisions if there was stronger oversight, including 'a clear right of appeal, human checks, limitations on personal information sharing within and outside government, and stronger laws to protect human rights'.[51]

What areas should the public service focus on over the next 10 years to meet the Australian community's evolving needs?

32. To meet the Australian community's evolving needs in the context of AI development, the Australian Government must invest in AI literacy initiatives for individuals and communities. Greater AI literacy will increase accessibility and accountability, and may work to address the risks of automation bias. This literacy support must be genuinely accessible and inclusive, and co-designed and co-produced with diverse communities, including people with disability. AI literacy initiatives must improve public understanding of what AI is; how it is already used within public services and how it may be used in future; how the Australian government assesses and addresses risks, and how members of the public can seek information about or contest AI-assisted or automated decisions. Such information must be communicated in accessible, plain language.

33. The Australian Government must also implement adequate safeguards for the Australian public in light of rapid developments in AI. This includes by implementing greater privacy and data protection, developing robust responses to digital safety risks, combatting the spread of misinformation, and preparing for the impacts of AI on workforce participation and unemployment.

RECOMMENDATIONS

1. Implement the Recommendations made in the Final Report of the Royal Commission into the Robodebt Scheme to ensure that the implementation of AI or automation in the public service is human-centred, ethical, responsible, lawful and <u>not lethal</u>.

2. Implement mechanisms (including adequate resourcing) to ensure that public services, and the tools, platforms and systems used are accessible, efficient, and responsive to diverse needs.

3. Address harmful and damaging attitudes towards individuals who access public services, including within service systems.

4. Address digital exclusion, including by increasing both material and functional access to digital technologies to ensure that marginalised communities are not excluded from accessing public services.

5. Ensure that the design, development, use, and monitoring of AI-powered tools and systems is consistent with international human rights obligations. This includes by addressing the specific needs of people with a disability.

6. Implement mechanisms to ensure transparency regarding where and how AI-powered systems, automation, and AI-assisted decision making are used. This includes by undertaking public audits on governmental use of AI and publicly disclosing its use to those interacting with the relevant service. This requires plain language explanation.

7. Engage with, and properly resource, people with disability and their representative organisations to ensure that AI-powered systems are genuinely accessible, and that digital inequities are addressed.

8. Increase the representation of people with disability in the technology and public sectors, to ensure that people with disability are involved in the accessible and human-centred design of public services and AI-powered systems.

9. Support and resource capacity building for representative organisations to monitor the impact of artificial intelligence on the rights of people with disability, and advocate for disability-inclusive AI.

10. Use AI to advance, not violate, the rights of people with disability under the Convention on the Rights of Persons with Disabilities.

11. Implement the Recommendations made to States in the Report of the Special Rapporteur on the rights of persons with disabilities in relation to artificial intelligence and the rights of persons with disabilities.[52]

12. Implement mechanisms to ensure that decision-making within public services is ethical, human-centred, fair and transparent.

13. Mandate human rights-based risk and impact assessments prior to the use of AI, including for public services and private sector.

14. Legislate to ensure that there is clear and robust regulation of AI use. This includes by clarifying existing legislative frameworks to ensure that there is redress for harm caused by AI-assisted decision making, including under both administrative and anti-discrimination law.

15. Establish an independent body to monitor, investigate and oversee the use of AI and provide independent expertise relating to AI and human rights, such as an AI Safety Commissioner.

16. Increase AI literacy within the Australian public, with accessible, inclusive and comprehensive programs that address the needs of diverse individuals and communities.

17. Increase the alignment of Australian regulatory frameworks with human rights principles, including in relation to data protection, health, safety and technology. As the United Nations High Commissioner for Human Rights has noted, 'a human rights perspective on the development and use of AI will have limited impact if respect for human rights is inadequate in the broader regulatory and institutional landscape'.[53]

18. Address the risks posed by AI developments to workforce participation through progressive social welfare policy.

ENDNOTES

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