WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

Response to 'Safe and responsible AI in Australia' Discussion Paper

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Contact

Women With Disabilities Australia (WWDA)
Contact: Carolyn Frohmader, Executive Director
PO Box 407, Lenah Valley, 7008 Tasmania, Australia
Phone: +61 438 535 535
Email: carolyn@wwda.org.au
Email: officeadmin@wwda.org.au
Web: www.wwda.org.au
Facebook: www.facebook.com/WWDA.Australia
Twitter: www.twitter.com/WWDA_AU

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2021
Nominee, National Disability Awards 2017
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000
Finalist, International Zero23 Award, Information and Communication Technologies (ICT)

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 RESPONSE TO THE *'SAFE AND RESPONSIBLE AI IN AUSTRALIA'* DISCUSSION PAPER

1. Women With Disabilities Australia (**WWDA**) welcomes the opportunity to respond to the Australian Government's 'Safe and Responsible AI in Australia' Discussion Paper (**Discussion Paper**). WWDA commends the Government on its efforts to ensure that the use of artificial intelligence (AI) in Australia is safe and responsible, and subject to robust governance. 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.

2. As the Consultation Paper identifies, the safe, ethical and responsible use of AI presents significant opportunities for Australia to improve economic and social outcomes. This includes by providing opportunities to advance disability rights, in particular through the use of assistive technologies. However, the increased use of AI 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.[2] There is therefore an urgent need for consideration of the balance of risks and opportunities presented by AI in the context of disability.[3]

Opportunities and challenges presented by AI

3. When implemented responsibly, AI has the potential to improve various aspects of everyday life, including by enhancing service delivery, increasing accessibility, and promoting access to information. Enhancing the efficiency and responsiveness of 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 can 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 charges in time-based increments. There is therefore potential for AI to enhance the accessibility of services within the public and private sectors, including by providing 24-hour support and availability, and instant translation to languages other than English, including Easy Read, and Auslan.

4. Responsible use of AI may also improve data-driven policy making and evaluation, increasing capacity to analyse significant datasets, recognise patterns, generate insights and predictions, and identify risks. 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.

5. 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.[4] 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.[5] The study found that in the absence of social cues, the qualifications of Autistic candidates played a greater role in hiring decisions.[6] By removing irrelevant information from decision-making, AI-assisted processes and tools could reduce discriminatory practices not only in employment, but in all areas of life.

6. However, the increased use of AI 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'.[7] 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.[8] The increased use of AI 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.[9]

7. 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.[10] Algorithmic bias may arise due to the design of the AI-based tools or systems used, as well as the data being used.[11] 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.[12] 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.

8. 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.[13] Indeed, the Australian Government's 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 an automated debt assessment they had received was incorrect.[14] This was at the root of much of the harm caused by the Scheme, as detailed in the Final Report of the Royal Commission into the Robodebt Scheme.

9. The increased use of AI 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,[15] 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'.[16] 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 services employ new technologies, disparities in digital literacy and accessibility can mean that those who rely on those services experience the greatest disadvantage.[17] For example, increased digitisation of government services has already posed barriers for people with intellectual disability who may require human customer support.[18] Digital inclusion will not be realised unless all aspects of access,

affordability and digital literacy are addressed.[19] This is a prerequisite to the human-centred and non-discriminatory design and implementation of AI-assisted tools and 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'.[20]

10. Evidently, depending on its use and regulation, AI has the capacity to either promote or breach the rights of people with disability. In specific areas, potential positive and negative outcomes may include the following:

> **Consumer experience:** With appropriate design and implementation, the use of AI has the potential to increase the accessibility and efficiency of services 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.[21]

> **Administrative burden:** By automating repetitive tasks, including document processing and data entry, AI systems may reduce administrative burdens for both consumers and the workforce. 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 increase efficiency and effectiveness, by streamlining processes.

> **Provision of information:** With the use of AI, information may be sought and disseminated instantly. 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 can enhance the breadth and efficiency of data collection and analysis. This may assist, for example, to address the dearth of data disaggregated by gender and disability in Australia. However, data collection must be responsible and genuinely representative.

11. To ensure that the Australian public, including people with disability, benefit from the increased use of AI, it must be implemented, used and monitored ethically and responsibly. It must also involve a human rights-based approach. Australia's AI Ethics Principles are a positive starting point. However, principles such as "AI systems should respect human rights, diversity, and the autonomy of individuals" and "AI systems should be inclusive and accessible, and should not involve or result in unfair discrimination" should not be merely discretionary. Principles that ensure human rights, safety, accountability, human-centred design, transparency, and fairness should be mandated.

Responsible AI use in the public sector

12. Consideration of the use of AI or automation within government agencies and public decision-making must acknowledge the 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 within the public sector was deadly. 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.[22]

13. Public trust must therefore be rebuilt, not only in automation and AI but also in government agencies. Research by PwC recognises two categories of trust and its drivers in relation to public services: 'experience trust' and 'values trust'.[23] 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.[24] Drivers of values trust include transparency, honesty and fairness, influenced by ethical decision making, fair treatment and valuing the public interest.[25] The increased use of AI and automation within the public sector must have regard to these drivers in order to meet the needs of the Australian public.

14. As was identified by the Federal Government's 2022 Annual Report, trust in Australian public services also reflects demographic factors, and is lower for women and people with disability.[26] People who face overlapping marginalisation, including women with disability, have significantly lower levels of trust in public services.[27] Among service agencies included in the Annual Report, respondents reported the lowest levels of trust in Centrelink and the National Disability Insurance Scheme.[28] 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 and government agencies become more trustworthy for marginalised groups of people, by demonstrating fairness and responsiveness to their needs. This requires transparency in relation to the use of AI and automation, and robust governance.

15. The impact of the Robodebt Scheme on distrust in automation and in government agencies has reached a population broader than those directly affected. 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. As noted in the Final Report:

    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.[29]

16. 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.[30] Advocates reported that 37% of the Robodebt victims they represented had a disability,[31] despite people with disability making up only 18% of the general population,[32] and despite reported attempts to exclude vulnerable people including

people on the Disability Support Pension from the Robodebt Scheme.[33] The Australian Government must ensure that any use of AI and automation within its agencies is responsible, ethical, transparent, and responsive to the needs of marginalised demographics. This includes by ensuring that it does not adversely impact the rights of people with disability.

Building AI literacy

17. To increase public trust in AI, the Australian Government must also invest in AI literacy initiatives for individuals and communities. The available research indicates that most Australians have limited understanding of AI and how and where it is used. Greater AI literacy will increase accessibility and accountability, and may work to address the risks of automation bias. It is also likely to increase uptake of AI-assisted tools and services. 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 the public and private sectors and how it may be used in future; how the Australian Government assesses and addresses risks, and how individuals can seek information about or contest AI-assisted or automated decisions. Such information must be communicated in accessible, plain language.

Managing risks posed by AI

18. 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.[34]

19. 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.[35]*

20. 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.[36] The independence of regulation is crucial to ensuring impartiality, and to addressing 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.[37] Another Australian study found that the majority of people surveyed would have more trust in automated 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'.[38]

21. 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]*

22. The Australian Government 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:

    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]

23. 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]*

24. 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]

25. As the Discussion Paper identifies, without the knowledge that they have been impacted by an AI-assisted decision, they may be unable, or unaware of how, to seek recourse for an incorrect or unfair decision. The Discussion Paper correctly acknowledges that without an understanding of how the decision was made and on what basis, individuals will be hampered in establishing a case. Although the Discussion Paper notes that individuals are not prevented from challenging decisions or seeking a review of adverse decisions, pathways to do so must be clarified with clear legislative reform. For example, the principles of administrative law, and anti-discrimination frameworks, must clearly apply. This requires that these legislative frameworks explicitly extend to such decisions, ensuring that there are clear avenues for review, appeal and redress. To date, there has only been a piecemeal legislative approach. As critics have observed, for example, 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.

26. The Australian Government 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.

27. Ultimately, and 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]

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 not lethal.
2. Address digital exclusion, including by increasing both material and functional access to digital technologies to ensure that marginalised communities are not excluded from accessing AI-assisted tools or services.
3. 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.
4. 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.
5. 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.
6. 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 and oversight of AI-powered systems.
7. 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.
8. Use AI to advance, not violate, the rights of people with disability under the Convention on the Rights of Persons with Disabilities.
9. 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.[47]
10. Implement mechanisms to ensure that AI-assisted decision-making is ethical, human-centred, fair and transparent.
11. Mandate human rights-based risk and impact assessments prior to the use of AI, including for public services and private sector.
12. 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. Ensure that such legislation is based on a human rights-approach to regulation.

13. 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.

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

15. Increase the alignment of Australian regulatory frameworks with human rights principles generally, 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'.[48]

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

ENDNOTES

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