



Monday 18th March 2019

ATTN: Mr Edward Santow
Human Rights Commissioner
Australian Human Rights Commission
GPO BOX 5218
SYDNEY NSW 2001

Via email to: tech@humanrights.gov.au

Dear Mr Santow,

RE: Submission on the *Human Rights and Technology White Paper*

Standards Australia thanks the Australian Human Rights Commission (AHRC) for the opportunity to make a submission to the Whitepaper titled '*Artificial Intelligence: Governance and Leadership*'.¹

We share the view that examining human rights issues in the deployment of technology is important. Indeed, the widespread discussions that have taken place within companies across Australia, following the release of the UN Guidelines on Business and Human Rights, and the recent passage of the Modern Slavery Act in Australia, and in NSW, are indicative of a growing interest in human rights and other issues, including corporate social responsibility (CSR). Moreover, strong corporate commitments globally on Artificial Intelligence (AI) are evidence of an increasing investment in exploring what the responsible deployment of AI looks like.²

We have limited our comments in this submission to our expertise as Australia's national standards body, but contextualise this with reference to the issues raised in the Whitepaper.

The Whitepaper and its core recommendation

The core recommendation of the Whitepaper, for a Responsible Innovation Organisation, may lead to significant duplication. In the Australian context, there are already a range of regulatory bodies through which companies in specific sectors are required, sometimes through regulation and statute, to engage, in the development, approval and sale of products or services. These range from the Therapeutic Goods Administration (TGA), in relation to specific

¹ Australian Human Rights Commission and World Economic Forum (2019). *Artificial Intelligence: Governance and Leadership*. Sydney: Australian Human Rights Commission and World Economic Forum.

² See, for example: Microsoft (2017). *The Future Computed: Artificial Intelligence and its Role in Society*. Seattle: Microsoft and Google (2018). 'Artificial Intelligence at Google: Our Principles', accessed 14/03/2019 from: <https://ai.google/principles/>

medical devices, to the Australian Communications and Media Authority (ACMA), and the Australian Competition and Consumer Commission (ACCC). Additionally, at State level, there are other regulatory bodies, including for example the Office of Fair Trading in NSW, which have specific remits. Citizens and consumers also have recourse to the Information and Privacy Commissioners federally, and within their own jurisdictions.

Additionally, there are internationally recognised bodies that have historically played an instrumental role in outlining good practice(s) in the design, development and responsible use of new products and services, including in relation to information communication technologies (ICT). An example of such an organisation is the International Organization for Standardization (ISO), of which Standards Australia is the national member body for Australia. ISO have developed widely used quality control (ISO 9001) and information security (ISO 27001) standards for use in the international domain, which has been critical to advancing the responsible use of ITC and safeguarding of data. Additionally, in Australia, and again in relation to ICT, one of the technical committees, IT-030 'ICT Governance and Management', has been instrumental in the development of global Standards, as Australia's voice and vote to ISO/IEC Joint Technical Committee (JTC) 1, Sub-Committee (SC) 40. This includes, most recently, work on data usage (including privacy preserving data-sharing frameworks) through JTC 1/SG7, a proposal Australia led. In a world marked by increasingly complex supply chains, adopting common norms globally, through Standards, can be beneficial for companies and consumers.

Australian consumers are generally early adopters of information and telecommunication technologies (ICT), and many of these are imported.³ Accordingly, the influence of International Standards-setting committees, through bodies such as the ISO, could help Australia to effectively shape the responsible development of future technologies, including AI. There is, of course, other work required outside of the realm of Standards alone, for which other agencies, bodies, think tanks and companies themselves will have more fulsome contributions to make.

Defining the focus of human rights and technology

The core issues that can arise in AI deployment which engage human rights are essentially administrative decisions, often by agents of the state. These may amount to substantive breaches of rights. This can be, for example, at the level of public policy decision making, in areas such as digitalising essential health and social services. Here, it is arguably some of the implementation decisions taken, without particular regard to existing legal obligations, or without regard to human rights norms, that result in breaches of human rights, and not an application or instance of technology itself. For example, the Special Rapporteur on extreme poverty and human rights, has argued that, in the United Kingdom, the 'digital by default' approach to Universal Credit, a politic-technical decision, has resulted in significant issues for recipients, including those who are not technologically literate.⁴ These are *implementation risks*, arguably driven by government decision-making processes.

The work of the UN Special Rapporteur, as outlined above, underlines that in relation to automation, it is neither the developers of applications, nor vendors, but rather those who

³ Productivity Commission (2016). *Digital Disruption: What do governments need to do? Commission Research Paper*, Canberra: Commonwealth of Australia, p.13.

⁴ Alston, P. (2018). *Statement on Visit to the United Kingdom*, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights. Geneva: UN.

primarily arrive at *implementation* decisions (namely government itself) whose actions might amount to a breach of specific human rights. Furthermore, globally, it has been the denial, by governments, of access to new technologies, including medications, that has led to breaches of the right to health under article 12(1) of ICESCR, or as codified in domestic laws.⁵ It is not unreasonable to suspect that similar analogous circumstances might arise in relation to digital technologies too, were State parties to adopt onerous requirements disproportionate to any real risk(s) to citizens. For this reason, without an adequate focus on improving awareness, capabilities and tools within Government agencies, for which more effective remedies to human rights breaches are indeed available under international human rights law (i.e. via the Universal Periodic Review process), assigning responsibility for potential shortcomings to corporate actors in isolation might be misplaced and premature.

Accordingly, we recommend the Commission pay particular attention to the role of Government actors during the course of this project, as we believe this is where accountability should be most keenly felt, including within our existing human rights architecture.⁶ It is essential that the Human Rights Commission Human Rights and Technology process have cognisance of the broader existing regulatory and policy direction and expectations of the Australian Government, business and society. Standards Australia has been engaging with stakeholders to ensure that standardisation continues to play its role in ensuring safety, interoperability and access across different sectors of the Australian economy and society, including when it comes to AI.

Standards Australia's current work in the area of AI

Standards Australia is facilitating work in four distinct areas, with the aim of achieving coherence when it comes to Standards in the area of AI. All Standards are voluntary, unless called up in regulation, which occurs from time to time in the Australian context. Standards Australia committees are balanced and bring together all interested parties to openly propose solutions, resolve differences and reach consensus on a very wide range of topics of public concern. By being 'part of the solution', technology suppliers, end users, governments, researchers and consumer advocates provide expert input and bring their local issues to the international stage. Using a one-country one-vote system, through ISO and the International Electrotechnical Commission (IEC) Australian interests are properly considered and represented in the development of global and local solutions.

Multi-sectoral forum

In 2018, we established an AI Working Group with broad Industry and professional body interest and participation. The intention of this was to work on defining the baseline opportunity horizon in relation to AI, issues that arise (including legal, ethical, social and political), and the respective remit of activities to address these issues or enable these opportunities.

Participating globally in AI Standardisation activities, through ISO/IEC

ISO/IEC JTC 1 SC42 (Artificial Intelligence) was established in 2017 and its primary objectives are to:

⁵ See, for example: Mason Meier, B. & Yamin, A.E. (2011). 'Right to Health Litigation and HIV/AIDS Policy', *Journal of Law, Medicine and Ethics*, 39(1).

⁶ Hallgath, L. & Tarantola, D. (2008). 'A rights-based approach to the assessment of global health initiatives', *Australian Journal of Human Rights*, 13(2): 157-180.

1. Serve as the focus and proponent for JTC 1's standardization program on Artificial Intelligence
2. Provide guidance to JTC 1, IEC, and ISO committees developing Artificial Intelligence applications

In late 2018, Standards Australia, at the request of stakeholders, formed a Mirror Committee to JTC 1/SC 42. The role of this mirror committee is essentially to provide an Australian voice and vote on matters concerning JTC 1/SC 42, enabling Australia to play a role in setting global Standards concerning AI. Such a role is envisaged through *Australia's Tech Future*, which calls for a global regulatory marketplace where “[g]lobal rules and standards affecting digital technologies and digital trade support Australia’s interests.”⁷

SC 42 currently has nine Standards under development, focused variously on terminology, reference architecture and, more recently, ‘bias in AI systems and AI aided decision making’. This Committee is also driving work on the governance of AI within organisational settings, to ensure the responsible use of AI.

Entering into partnerships to improve access to Standards

Standards Australia recently signed an agreement with IEEE to facilitate the adoption of IEEE Standards in the Australian context. Given the work already undertaken in relation to AI, this will improve the pathways for their access and use in the Australian context.⁸

Working with the Australian Government

Standards Australia is responding to issues associated with artificial intelligence including privacy, ethics, technology development and social impacts and the role of standards with the commencement of an artificial intelligence standardisation roadmap project with the Australian Department of Industry, Innovation and Science (DIIS). The AI project is expected to run until late 2019 with the release of a roadmap report.

The report will:

- Assess the international frameworks and architecture of standardisation in the field of artificial intelligence, including JTC 1 and its subcommittees;
- Document an evidence base and rationale to support the proposed role for Australia in international standardisation activities;
- Identify priority areas for AI standards development; and
- Identify a pathway for Australia leadership on international standardisation activities for AI.

In developing the roadmap report, Standards Australia will consult with stakeholders across civil society, government and industry.

Alternative options

Should the Commission proceed with the development of a specialised function to examine the human rights impacts of particular forms of technology, a function within the Australian Human

⁷ Department of Industry, Innovation and Science (2018). *Australia's Tech Future. Delivering a strong, safe and inclusive digital economy*. Canberra: Commonwealth of Australia, p. 45.

⁸ Standards Australia (2019). ‘Statement: Greater choice of global standards to benefit Australia’, accessed 11/03/2019, from: <https://www.standards.org.au/news/greater-choice-of-global-standards-to-benefit-australia>

Rights Commission may be more appropriate. This could engage with industry, on a voluntary basis, in particular areas of product development or applicability, as well as with government, primarily through decision-making processes. It could be supported by secondments from across the Australian Government, to improve expertise relating to human rights in technology areas *and* technology in areas of human rights focus.

However, particular care needs to be taken to ensure that, for example, a broad belief in the right to privacy, for example, does not override the commitment's State Parties like Australia make to effective service provision under the United Nations Convention on the Rights of the Child (UNCRC) or the International Covenant of Economic, Social & Cultural Rights (ICESCR), for example. It is a very reasonable concern that expertise in Australia might be heavily weighted towards particular rights embedded in domestic law (such as privacy), rather than other equally important areas of our rights obligations, more widely recognised in other jurisdictions. Here, AI might deliver promise and improve service provision, thereby ensuring the recognition, protection and fulfilment of those rights.

For this reason, establishing such a function in the Australian context would require cross-collaboration, and the development of deep and specific expertise in relation to human rights jurisprudence, technological advances, citizen preferences, commercial relationships, and political and public sensitives.

Recommendation

We would recommend further discussions and engagement in relation to this process. Specifically, we would welcome the opportunity to explore how the International Standards development process, through Standards Australia and ISO, can be harnessed to provide some practical solutions to the challenge of the governance of AI.

Yours sincerely,

Dr Jed Homer
Policy Manager
Standards Australia

Appendix

Standards Australia: Who we are and what we do

Standards Australia is recognised by the Commonwealth as Australia's peak non-government standards body. Founded in 1922, it is an independent and not-for-profit organisation and is the Australian member of the International Organisation for Standardisation (ISO), International Electro technical Commission (IEC) and the Pacific Area Standards Congress (PASC). At the international level, Standards Australia is committed to representing the views of stakeholders, government and consumers in standards development and related activities. Domestically, standards are developed for the net benefit of Australia and enhance economic efficiency, increase community safety and sustainability, and improve industry and international competitiveness.

Standards Australia facilitates standards development through technical committees, by bringing together relevant stakeholders to develop standards documents through a process of consensus. Our current catalogue consists of approximately 6000 voluntary standards across 12 sectors of the Australian economy, including energy and electrotechnology, ICT, manufacturing and consumer products and services. The building and construction sector is a standards development priority for Standards Australia and involves engagement with legislative authority at all levels of Australian government.

Standards Australia works with all tiers of government and industry. Our standards development process creates opportunities for a robust exchange of knowledge, expertise, and perspectives in the development of consensus based standards and other solutions to improve performance, productivity, as well as health and safety outcomes for all Australians.