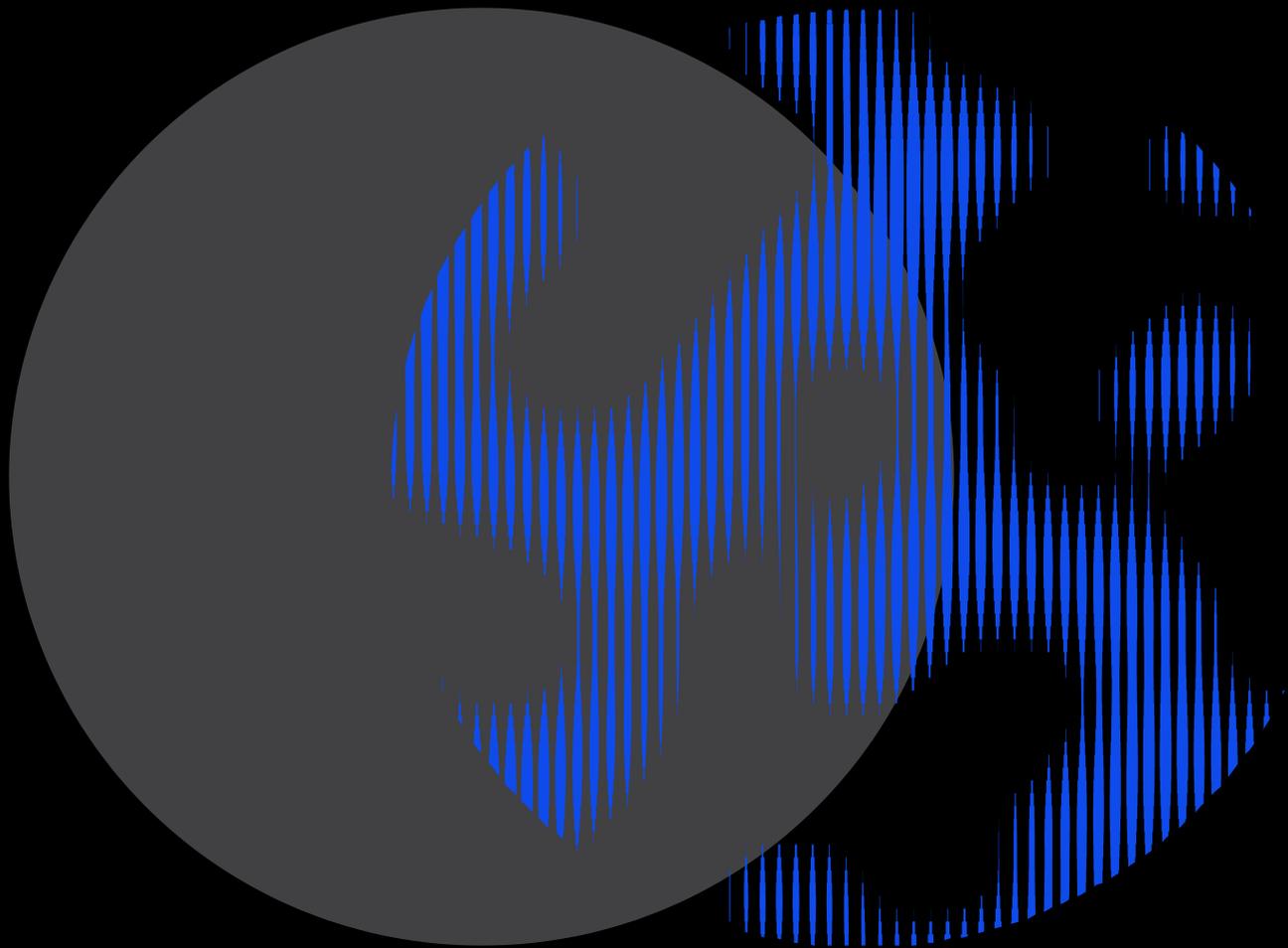




**Human Technology
Institute**



Use of Automated Decision-Making by Government

Submission to the Attorney-General's Department

28 January 2025

The Human Technology Institute (HTI) is building a future that applies human values to new technology. HTI embodies the strategic vision of the University of Technology Sydney (UTS) to be a leading public university of technology, recognised for its global impact specifically in the responsible development, use and regulation of technology. HTI is an authoritative voice in Australia and internationally on human-centred technology. HTI works with communities and organisations to develop skills, tools and policy that ensure new and emerging technologies are safe, fair and inclusive and do not replicate and entrench existing inequalities.

The work of HTI is informed by a multi-disciplinary approach with expertise in data science, law and governance, policy and human rights.

HTI provides independent advice and other input to the Australian Government, as well as state and territory governments, on AI reform. Professor Edward Santow, HTI's Co-Director, is a member of the temporary AI Expert Group set up by the Department of Industry, Science and Resources (DISR) to advise Government on high-risk AI.

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Acknowledgement of Country

UTS acknowledges the Gadigal people of the Eora Nation, the Boorooberongal people of the Dharug Nation, the Bidiagal people and the Gamaygal people upon whose ancestral lands our university stands. We would also like to pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these lands.

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Executive summary

The Human Technology Institute (HTI) welcomes the opportunity to provide a submission to the Attorney-General's Department's Consultation Paper on the *Use of automated decision-making by government*. In light of increasing government adoption of automated decision-making (ADM) systems, policy and law reform are necessary to ensure that ADM systems are effective and operate lawfully and accountably. In particular, law and policy should protect against avoidable harms to Australians, such as those arising from the Robodebt Scheme—the impetus for this consultation.

Approach to reform

As a general principle, government should maintain a technology-neutral approach as it considers the regulation necessary for ADM, noting that administrative law principles apply regardless of the method or technology used to make an administrative decision. A review of administrative law is needed to ensure that the law applies appropriately to the use of ADM by government, and to promote certainty and consistency. In this submission, HTI proposes a number of specific amendments to existing laws.

When government is considering reform directly related to ADM – often through law and policy that is not technology neutral – it should maximise consistency with parallel AI initiatives, and existing rules applicable to private and public sector uses of ADM. There are a range of active AI law and policy reform processes that will inevitably intersect with an ADM-specific regulatory framework. Notably, this includes the proposed 'mandatory AI guardrails' being developed by the Department of Science, Industry and Resources (DISR) — which the ADM framework should align with, as far as possible.

Relevant legal and human rights standards

ADM systems have the potential to transform many activities of government, and to affect every Australian who engages with government. For this reason, Australian law and policy must be clear in requiring that ADM systems have a basis in, and comply with, relevant law. ADM systems must also comply with administrative law, Australia's international human rights law obligations and anti-discrimination laws.

Before adopting ADM, the Government should proactively consider the implications of ADM for vulnerable and marginalised populations, who are likely to be disproportionately harmed by ADM systems. Any adoption of ADM should be targeted and fit for purpose, as it will not be appropriate in every circumstance.

Steps to support compliance with legal and human rights standards

To ensure compliance by government with legal and human rights standards in respect of ADM, the following overarching steps are needed.

First, the ADM framework should outline baseline considerations for ADM adoption, namely, when government should, and should not, engage in ADM. HTI proposes that ADM should not be used where it:

- has an unjustified impact on the human rights of individuals or groups especially in areas such as privacy protection.
- is likely to be unlawful or to produce unlawful outputs, due to the incorrect application of an existing law, or lack of legal basis
- automates or unduly influences the exercise of discretion, in the absence of exceptional circumstances
- compromises accuracy in decision making

- cannot be guaranteed to apply the law in a manner that is consistent and foreseeable
- cannot produce a plain-English explanation, and a technical explanation, for its decisions or other outputs
- is likely to have a significant adverse impact on Australia's liberal-democratic system or to undermine public confidence in government administration.

Second, primary legislation that 'delegates' decision-making powers to computers should be audited, and new provisions of this kind should be drafted in a consistent manner. For each of these provisions, it is necessary to determine whether the delegation is appropriate as a first step, and ensure that safeguards are incorporated.

Third, government departments and agencies that rely on ADM should be required to develop their own regulatory frameworks (for example, in subordinate legislation) to apply to ADM within their remit.

Fourth, before adopting ADM systems, government departments should be required to complete a mandatory assurance process. The Australian Government should develop an assurance tool that adapts the NSW Government's well-regarded AI Assessment Framework, including an independent review and approval process based on the NSW AI Review Committee.

There are also a number of reforms needed to meet specific legal and human rights requirements, that are recommended throughout this submission. These include:

- to ensure that ADM systems do not effectively reverse the burden of proof, there should be obligations on government to prevent individuals from being held responsible for ADM errors, and to notify affected individuals when ADM errors occur
- a high standard of privacy and data protection requirements should be built into the ADM framework. Outstanding *Privacy Act 1988* (Cth) reforms should be implemented as soon as possible, and the framework should incorporate key recommendations relevant to ADM
- the framework should incorporate mandatory consultation requirements to ensure that the potential impacts of ADM systems for vulnerable and marginalised groups are considered from the outset.

Support for Australian Public Service staff and oversight bodies

The success of ADM systems depends on APS staff understanding both technical systems and the relevant underlying laws they are administering. A significant uplift in training for APS staff is needed, with a focus on human-centred AI/ADM principles. APS staff should also be consulted when ADM systems are adopted that will affect their day-to-day work.

To promote accountability for ADM use across government, federal oversight bodies and regulators must be equipped with the powers and resources needed to enforce the law. HTI also supports the creation of an AI Commissioner role, to provide independent advice to government and regulators, and to support coordination across government, and between regulators.

Scope of the ADM framework

HTI proposes that the ADM framework extend to decisions, or decision-making process, where automation is a material factor in the decision, and where the decision has a legal or similarly significant effect on an individual. The framework should also include at least some forms of 'administrative actions' within its scope, noting that they can have significant impacts on people's human rights.

There should be no broad exemptions for government entities from the application of the framework. Any exemptions should be carefully circumscribed to apply only where it is demonstrably justified by reference to international human rights law.

Specific safeguards

HTI proposes a range of specific safeguards that should be included in an ADM framework:

- transparency measures, including the release of business rules and algorithms where appropriate; plain English explanations of ADM systems; and the creation of a public ADM register
- ongoing testing, monitoring and evaluation of ADM systems, and the maintenance of internal records to support external audits
- the provision of explanations and reasons for decisions, with the goal of enabling individuals to challenge the decision. This also requires notification when ADM is materially used to make the decision
- requirements for human oversight of decisions in certain circumstances, with processes to support effective oversight
- the provision of accessible pathways for internal review of ADM systems, and open complaints and feedback mechanisms for staff and the public
- assurances of pathways for merits review of ADM decisions, in circumstances where the decision would be reviewable if made by a human decision-maker.

List of recommendations

Recommendation 1

When developing the ADM framework, the Australian Government should:

- favour a technology neutral approach to law reform;
- maximise consistency in the rules applicable to government and non-government ADM, and align with other AI law reform initiatives;
- provide technical guidance to other parts of government, to assist them to comply with laws applicable to ADM.

Recommendation 2

- The ADM framework should apply to a decision, or decision-making process, where automation is material in making the decision, and where the decision has a legal or similarly significant effect on an individual, inclusive of human rights impacts.
- The ADM framework should apply to the use of automation to take administrative action that may have a systemic impact on the human rights of individuals or groups, with corresponding systemic safeguards.

Recommendation 3

The Australian Government should amend relevant legislation, including s 25D of the *Acts Interpretation Act 1901* (Cth), to provide that for the avoidance of doubt, the use of automation is not a factor weighing against an action being considered a 'decision' within the meaning of administrative law.

Recommendation 4

The ADM framework should outline clear principles for assessing whether an ADM system is appropriate for use by government, consistent with the following list. An ADM system will be inappropriate for use by government when it:

- has an unjustified impact on the human rights of individuals or groups, especially in areas such as privacy protection, by reference to the *Siracusa* principles
- is likely to be unlawful or to produce unlawful outputs, due to the incorrect application of an existing law, or lack of legal basis
- automates or unduly influences the exercise of discretion, in the absence of exceptional circumstances
- compromises accuracy in decision making, including with respect to accuracy rates generally, and by reference to any demographic groups that are likely to be affected disproportionately
- cannot be guaranteed to apply the law in a manner that is consistent and foreseeable
- cannot produce a plain English explanation, and a technical explanation, for its decisions or other outputs
- is likely to have a significant adverse impact on Australia's liberal-democratic system or to undermine public confidence in government administration.

Recommendation 5

- Before introducing a computer-delegation provision to Parliament, the Australian Government should clearly articulate why the delegation is appropriate under the relevant Act. The drafting of computer delegation provisions should also articulate:
 - what decisions and actions the provision applies to under the Act
 - which human(s) are ultimately responsible for the decision
 - safeguards to ensure that decisions are made fairly and lawfully.
- The Australian Government should conduct an audit of existing legislative computer delegation provisions against the above criteria. Amendments should be made where required.
- The Australian Government should develop guidance to assist in the formulation and drafting of future computer delegation provisions.

Recommendation 6

Government departments and agencies (including police, national security and defence organisations) should develop regulatory frameworks to govern their use of ADM systems. The frameworks should incorporate governance and accountability processes, and outline how administrative law principles and human rights standards are to be applied under the relevant Act.

Recommendation 7

The Australian Government should develop a mandatory assurance tool and process based on the NSW AI Assessment Framework and the NSW AI Review Committee. The tool should:

- require early assessment and documentation of human rights and administrative law considerations and risks

- require the implementation of relevant safeguards
- incorporate an independent review and approval process.

Recommendation 8

The Australian Government should not use AI, in an automated or semi-automated way, when it makes administrative decisions unless the AI system can be shown to:

- align with the requirements of underlying legislation, before deployment and over time
- demonstrate no negative or undesirable change over time to system outputs for common data inputs
- generate reasons or a technical explanation for an affected person or enable a human decision-maker to do so.

Recommendation 9

ADM generally should not be used for any discretionary element of the decision-making process, nor should it be used where there is a likelihood that it will narrow the exercise of discretion, unless exceptional circumstances apply that justify its use on human rights grounds. The principle in this recommendation should be set out in law.

Recommendation 10

Government departments and agencies should be required to proactively monitor for errors in each of its ADM systems, including through ongoing accuracy and performance testing, before and after the ADM system is deployed.

Recommendation 11

The Australian Government should introduce legislation to provide that:

- individuals are not to be held responsible for errors in circumstances where the error was caused materially as a result of an ADM system (including a human official's interaction with an ADM system) or due to incorrect information generated and presented to the individual by government
- government departments and agencies are obliged to notify affected people when they have been subject to an ADM decision that has been affected by error.

Recommendation 12

The ADM framework should require government departments and agencies to proactively consider the needs of at-risk, vulnerable and marginalised cohorts when adopting, developing and using ADM systems, including through mandatory consultation with groups that are likely to be directly or disproportionately impacted.

Recommendation 13

- The Australian Government should commit to introducing the remaining reforms set out in the Attorney-General's Department Privacy Act Review Report and

which the Government agreed to, or agreed to in principle, within six months of the forthcoming federal election

- The ADM framework should integrate privacy and data protection requirements as outlined in the Privacy Act, and in relevant outstanding privacy reform recommendations, to apply across the lifecycle of ADM systems.

Recommendation 14

- The Australian Government should invest in training APS staff so they can engage in human review of ADM decisions, with an understanding of ADM technology they work with, the underlying law, and the application of human-centred AI principles.
- Government departments and agencies should consult with staff before adopting ADM systems that staff will interact with, or rely upon, to make decisions.

Recommendation 15

- The Australian Government should consult with federal regulators and oversight bodies (including the Office of the Australian Information Commissioner, the Commonwealth Ombudsman, and the Administrative Review Council) in order to support them to provide guidance on the ADM framework, investigate government use of ADM, and enforce the law effectively.
- The Australian Government should establish an AI Commissioner to provide independent expert advice to government and regulators and support a coordinated approach to AI reforms.

Recommendation 16

- The ADM framework should embed the following transparency measures:
 - a centralised public register of ADM systems used across the Australian Government
 - a requirement to publish business rules and algorithms, except in circumstances where this will objectively compromise the operation of the system or undermine its objectives
 - requirements to publish information about the ADM system and its purpose; risk assessments, or summaries of risk assessments; the kinds of personal data in use by the system; and the outcomes of audits and tests.
- The Australian Government should consider updating Freedom of Information laws to address ADM-related transparency concerns identified through the Robodebt Royal Commission.

Recommendation 17

Government agencies and departments should be required to notify affected individuals where ADM is materially used in making an administrative decision. That notification should include information regarding how an affected individual can challenge the decision.

Recommendation 18

- The Australian Government should make clear that, where a person has a legal entitlement to reasons for a decision, this entitlement exists regardless of how the decision is made.
- To this end, relevant legislation including s 25D of the *Acts Interpretation Act 1901* (Cth) should be amended to provide that:
 - where a person has a right to reasons the person is entitled also to a technical explanation of the decision, in a form that could be assessed and validated by a person with relevant technical expertise
 - the decision maker must provide this technical explanation to the person within a reasonable time following any valid request.

Recommendation 19

Through the ADM framework, the Australian Government should ensure:

- ensure that there is genuine human oversight where ADM is used to make a decision that may adversely affect an individual's legal rights or have other significant impacts; where there is an element of discretion involved; and in circumstances where there is a significant risk of error
- ensure that this is a process for a responsible human to check a decision where appropriate
- enable substitution of decisions by human decision-makers, in circumstances where the substitution will not compromise the integrity of the initial decision (i.e. will not be less accurate, or contrary to human rights principles)
- ensure that ADM systems are designed to enable interventions and reversals by human staff in an accessible manner.

Recommendation 20

Through the ADM framework, the Australian Government should ensure that government departments and agencies:

- develop accessible pathways for internal review of ADM decisions
- encourage and support APS staff to provide information about system errors or patterns of complaints that indicate systemic issues to senior officials
- develop complaints and feedback mechanisms available for affected individuals and staff to utilise, with options for anonymity
- record data on the above, and make it available upon request to relevant external oversight bodies.

Recommendation 21

The Australian Government should assess whether amendments to laws are needed to guarantee access to merits review in circumstances where the decision would be reviewable if made by a human decision-maker.

Recommendation 22

The ADM framework should not carve out broad exemptions for government bodies. Where a government body considers that an exemption is needed, there should be an independent adjudicative process to consider an application and decide whether the application should be granted, and on what terms.

Context and introductory points

Need for coordination across government

The Australian Government has embarked on significant reform processes related to AI, in diverse areas of law and policy. These include several initiatives that address government's own use of AI. While the Consultation Paper rightly observes that AI and ADM are 'related, but distinct concepts', the fact that a high proportion of this more AI-specific reform will be directly or at least indirectly relevant to ADM means that coordination with AI reform is important.

DISR is currently developing mandatory guardrails for high-risk AI. It is anticipated that, once finalised, these guardrails will apply to uses of high-risk AI across the public and private sector.

Other government-focused policy initiatives include the Digital Transformation Agency's policy for the *Responsible use of AI in Government*, and the Australian Government's *National Framework for the Assurance of AI in Government*.¹

There are also several domain-specific law reform or consultation processes underway, which are considering the implications of the rise of AI for existing law.² These include reforms to the *Privacy Act 1988* (Cth), which will directly impact upon government's own use of ADM systems.

In order for the future ADM framework for government to be workable and coherent, it is essential that it takes into account, and aligns with, parallel AI initiatives and reforms. HTI renews its call for the adoption of an AI Regulatory Strategy for Australia to promote a consistent and coordinated approach to AI regulation and reform across the whole of government, underpinned by a clear and unified regulatory objective.³

Alignment with proposed mandatory guardrails

It is crucial that the Australian Government carefully consider how the proposed mandatory guardrails may practically interact with an ADM framework, since the guardrails are intended to encompass government uses of AI.

HTI considers that government should be required to comply with the proposed mandatory guardrails, because the risks associated with government use of AI are, in aggregate, at least as great as those associated with non-government use. Indeed, many government uses of AI are likely to be classed as high-risk, because of their impact on people's rights and the heightened potential for harms when AI is deployed in critical public systems and services.

Government must comply with a number of additional laws beyond those that apply both to government and non-government entities. For example, administrative law regulates administrative decision making, regardless of whether and, if so, how government uses technology to make such decisions. Government also must comply with Australian and international human rights law.

In view of the above, HTI recommends that the Government be guided by the following principles regarding ADM reform. First, the Government should continue to favour a technology-neutral approach to regulation. Hence, administrative law and other such laws directed to government action need to be reviewed carefully to ensure that they apply appropriately to the use of ADM by government.

Second, where the Government is considering reform directed to ADM, or to related technology such as AI, it should adopt an approach that maximises consistency in the rules applicable to government and non-government ADM. It should also maximise

consistency with other AI law reform, such as the proposed mandatory guardrails. For example, the approach to defining and assessing risk that is ultimately adopted in the mandatory guardrails legislation should be reflected in, and adapted to, the ADM framework. In its submission to DISR's consultation, HTI proposed a definition of risk grounded in international human rights law, and related risk assessment considerations, that can also be used as a reference for the Attorney-General's Department.⁴ Similarly, any definition of AI adopted in mandatory guardrails law should be incorporated into the ADM framework. Maximising consistency in this way will assist in reducing unnecessary regulatory burden, given that the vast majority of ADM systems are developed with or by the private sector.

Third, the government department with policy responsibility for ADM reform – currently, AGD – should support other parts of government in complying with the law applicable to ADM, by offering technical guidance. For example, in this submission, HTI recommends that a mandatory assurance tool be developed by the Australian Government to practically support compliance across the two regimes, through a singular, unified process.

Recommendation 1

When developing the ADM framework, the Australian Government should:

- **favour a technology neutral approach to law reform**
- **maximise consistency in the rules applicable to government and non-government ADM, and align with other AI law reform initiatives**
- **provide technical guidance to other parts of government, to assist them to comply with laws applicable to ADM.**

Need for substantive criteria to guide government adoption of ADM

ADM systems are increasingly common across the public service in Australia. Governments in Australia and overseas have long recognised the benefits of ADM adoption, and the productivity gains associated with efficient government administration and service provision.⁵ This is often seen as part of government's digital transformation.⁶ Federal, state and territory governments are rapidly piloting and adopting ADM systems for a diverse range of purposes.⁷

There is no doubt that ADM adoption has significant value for government, and can benefit the Australian public in a myriad of ways. However, the impetus for this consultation process is the Robodebt Scheme, one of the biggest public policy failures in Australian history, with an ADM system at the heart of it. This should give us pause.

The Consultation Paper is primarily focused on ensuring that where government engages in ADM, it complies with narrow administrative law criteria, and it considers a range of safeguards for safe and responsible AI deployment. While these are essential considerations, HTI submits that there is a further fundamental point that also needs to be addressed: *in what circumstances government should, and should not, engage in ADM.*

The widespread uptake of ADM by government has occurred largely in the absence of laws and policies that clearly articulate such criteria. HTI's submission includes a detailed focus on these baseline considerations, and synthesises a set of administrative law and human rights principles to guide ADM adoption by government.

Need to make administrative law clearer and more consistent

Where necessary, reforms should be made to relevant laws, such as the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act), the *Administrative Review Tribunal Act 2024* (Cth) (ART Act) and the *Acts Interpretation Act 1901* (Cth) (AIA Act) to clarify how administrative law applies to ADM, and resolve ambiguities. Some specific proposed amendments are recommended throughout this submission.

Scope of ADM framework, and definition of ‘decision’

Scope of application of an ADM framework for Government

Application to administrative decisions

The Consultation Paper refers to ADM as the use of technology to automate a decision-making process. This term includes a broad spectrum of technologies, including simple rules-based automated systems, and sophisticated AI systems that use machine learning.

When outlining the scope of an ADM framework, it is best to avoid overly technical or binary assessments of what is, and what is not, ADM. Any approach to defining ADM should recognise that many ADM systems are ‘sociotechnical’, involving a combination of technical infrastructure and a spectrum of human involvement, and operating within a particular social and organisational context.⁸

HTI recommends adapting the Australian Human Rights Commission’s (AHRC) proposed approach to identifying technology-informed decisions that require specific safeguards. This would include in scope a *decision, or decision-making process, where automation is a material factor in the decision, and where the decision has a legal or similarly significant effect on an individual*, inclusive of human rights impacts.⁹

The AHRC explained that whether or not automation is a ‘material factor’ in a decision will be context dependent. For example, where all key elements of the decision-making process are automated, the use of automation is clearly material. Where a key data point is generated automatically, and the human decision-maker then relies on that data point to make a decision, automation is likely to have had a material impact on the decision. On the other hand, where automation is used to display a range of relevant information on a screen for the decision-maker to consider, this likely will only have a trivial impact on the decision.¹⁰

The term ‘legal or similarly significant effect’ aligns with international approaches, in leading jurisdictions such as the European Union.¹¹ The Australian Government has also committed to adopting this formulation in the Privacy Act, in its response to the Privacy Review Report; and DISR’s Mandatory Guardrails consultation paper proposes similar terminology as a risk assessment principle for high-risk AI.¹² This wording would cover decisions that affect a person’s legal rights and interests, and decisions that have an equivalent impact on an individual’s circumstances, incorporating decisions that impact a person’s human rights. ‘Significant effects’ may refer to, for example, decisions that significantly affect someone’s financial circumstances (e.g., the automatic refusal of a business licence).¹³

The AHRC’s definition is inclusive of both decisions and decision-making processes. This covers the use of ADM to reach a particular *outcome* (such as the rejection of a visa application) or ADM used in a decision-making *process* (for example, the inclusion of race as a relevant weighted factor in an ADM tool determining the risk of reoffending).¹⁴

Application to administrative actions

The Consultation Paper contemplates whether the ADM framework should apply to both administrative decisions, and administrative *actions*. It defines administrative actions as follows:

*The expression ‘administrative action’ extends beyond decisions to also include exercising a power, or performing a function or duty (or failing or refusing to do so). Administrative actions may have an effect on an individual, either directly or indirectly. Examples of administrative actions may include exercising a power to conduct a hearing, or performing a function to monitor or oversee certain conduct.*¹⁵

There is a strong case for including at least some forms of administrative action within the ADM framework. Administrative actions can have significant implications for people’s human rights in certain contexts, even where those impacts are indirect or difficult for individuals to identify. For example, automation used to take administrative action would capture:

- Automation used to open an investigation. For example, government departments use risk-profiling systems that identify individuals that are ‘at risk’ of non-compliance with a legislative regime, or individuals that otherwise pose some kind of threat. This leads to human decision-makers opening investigations that involve intensive monitoring of individuals and can result in compliance measures.¹⁶
- Automation used to stream or triage people into a specific type of servicing. For example, the Jobseeker Classification Instrument utilised by the Department of Employment and Workplace Relations relies on ADM to calculate a score that predicts a Job Seeker’s future employability. The score determines the servicing level that will be provided to the individual, and affects how they are subsequently managed and monitored in the system.¹⁷
- Automated decisions may be made via a series of automated and non-automated processes, through apps, online platforms and via text message; and across different departmental portals, and linked-up non-government actors. For example, through the Targeted Compliance Framework, a person may receive an automated text message stating that their social security payment has been suspended, after receiving a series of incremental, unreviewable ‘demerit points’ from a third-party provider.¹⁸

The ADM framework should therefore apply to ADM systems used to take administrative actions that are likely to have a systemic impact on the human rights of individuals and groups. It should exclude ADM systems that have inconsequential human rights risks (for example, a timetabling tool used to set up a hearing).

A distinct policy response for this category of ADM systems may be needed, as the safeguards appropriate for administrative decisions (such as requirements for access to administrative review processes) are not necessarily suitable for administrative ‘actions’. Since these ADM systems are likely to have systemic impacts, it would be appropriate for the ADM framework to require corresponding systemic safeguards such as transparent reporting requirements, independent oversight measures and open feedback mechanisms.

Recommendation 2

- **The ADM framework should apply to a decision, or decision-making process, where automation is material in making the decision, and where**

the decision has a legal or similarly significant effect on an individual, inclusive of human rights impacts.

- **The ADM framework should apply to the use of automation to take administrative action that may have a systemic impact on the human rights of individuals or groups, with corresponding systemic safeguards.**

Amend law to clarify what constitutes a reviewable ‘decision’ under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*

There is ongoing legal uncertainty regarding whether automated decisions are ‘decisions’ for the purposes of the ADJR Act due to the majority decision of the Full Federal Court in *Pintarich v Deputy of Commissioner of Taxation* (Pintarich).¹⁹

In *Pintarich*, the majority held that an automated letter from the Australian Tax Office to a tax payer was not a ‘decision’ because there had been no ‘mental process’ of deliberation with respect to the letter.²⁰

The majority judgment indicates that the more automated a decision-making process is, the more immunised it is from judicial review, due to a lack of ‘mental process’. This is a perverse outcome, because automated decisions are not more likely to be legally correct, and in many cases, there is a higher risk of automated decisions being incorrect. This reasoning could also incentivise government to adopt ADM processes as a means of avoiding judicial scrutiny.²¹ Additionally, the judgment could create unfairness and uncertainty for individuals, who may not be able to rely on communications from government about decisions that affect them, when those communications are automated.²²

Justice Kerr, in his dissenting judgment, recognised the need for established legal doctrine to flexibly take into account new forms of decision making. Justice Kerr argued that determining whether a decision has been made should be ‘fact and context specific’, noting that what constitutes a decision ‘cannot be answered by comparing the facts of what happened in a particular instance against a boiler-plate statement of what decision making usually involves.’²³

In HTI’s view, a rigid articulation of what constitutes a ‘decision’ is inappropriate, because it does not account for the ‘variability and complexity of ADM’,²⁴ nor the reality of the rapid uptake of ADM systems to automate decision-making processes with consequential outcomes for individuals, in virtually every government context.

The Australian Government should rectify the uncertainty that has arisen from *Pintarich*. HTI recommends adopting the proposal of the AHRC to amend relevant legislation to clarify that the term ‘decision’ is inclusive of automated decisions.

Recommendation 3

The Australian Government should amend relevant legislation, including s 25D of the *Acts Interpretation Act 1901 (Cth)*, to provide that for the avoidance of doubt, the use of automation is not a factor weighing against an action being considered a ‘decision’ within the meaning of administrative law.

Comply with overarching legal and human rights standards

Government must comply with administrative law, the rule of law and international human rights law when making administrative decisions. These standards apply regardless of *how* a decision is made.

It is fundamental that ADM systems adopted by government have a basis in, and comply with, relevant law. Administrative law also requires ADM systems to be procedurally fair, accurate, transparent and rational, and to preserve legal rights of review.²⁵ A person affected by an ADM decision should understand why the decision was made, and how to challenge a decision. To ensure access to justice, there should be accessible pathways available for internal and external review.

Government decisions and actions must not arbitrarily interfere with a person's human rights, and they must be non-discriminatory. While the Consultation Paper addresses a range of risks associated with ADM, there should be a particular focus on human rights, in light of the Australian Government's obligations under international human rights instruments and Australia's domestic law,²⁶ and the centrality of human rights law to government decision-making processes.

While there is no federal Human Rights Act, the Australian Parliament has set out the primary human rights recognised in Australian law in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). These substantive rights should be considered alongside anti-discrimination laws when government is adopting and deploying ADM systems.

Human rights considerations will be relevant across a range of contexts across government – for example, the presumption of innocence and criminal procedure rights when ADM is used in the justice system or in policing; rights of access to essential services when ADM is used in contexts such as healthcare and social security; and political participation rights and freedom of expression when ADM is used within electoral or Parliamentary systems. The human right to privacy is also relevant at every stage of ADM development and use.

International human rights law and federal anti-discrimination laws require proactive consideration of the implications of ADM for vulnerable populations, including those experiencing marginalisation and discrimination. These cohorts are more likely to be disproportionately impacted by ADM decisions, and this is particularly the case when ADM is used in the context of government service provision that many rely upon to meet basic needs.

In 2019, the UN Special Rapporteur on Extreme Poverty, Professor Phillip Alston observed that government social welfare systems are increasingly driven by technologies that 'surveil, detect, target and punish' people, with financial incentives as the primary justification for their adoption, and human rights as an afterthought.²⁷ He said:

decisions [to automate] are all too often taken in the absence of sophisticated cost-benefit analyses. And when such analyses are undertaken, they consist of financial balance sheets that ignore what might be termed the fiscally invisible intangibles that underpin human rights. Values such as dignity, choice, self-respect, autonomy, self-determination, privacy, and a range of other factors are all traded off without being factored into the overall equation, all but guaranteeing that insufficient steps will be taken to ensure their role in the new digital systems.²⁸

In order to prevent the sorts of human rights violations associated with Robodebt, human rights considerations should be at the *forefront* of ADM adoption, and reflected in the policies that underpin these systems. Administrative convenience, efficiencies, and budgetary savings are not sufficient justifications for ADM adoption in isolation. Government should similarly resist the tendency to view automated systems used in part of a decision-making process as 'business tools' for government.²⁹ They can in fact have a transformative impact on government systems with significant legal and policy repercussions, and unintended consequences for individuals.

ADM systems will not be appropriate in all circumstances, even if there is nothing explicit in domestic Australian law that prohibits the use of automation in a particular context. ADM must be targeted for use in areas where it is suited and fit-for-purpose. As noted by the AHRC, albeit in the broader context of AI more generally, 'introducing legislation to enable AI to be used in a particular area of administrative decision making does not necessarily make it *desirable* to use AI, even where the legislation includes safeguards.'³⁰

Weighing interests and rights under international human rights law

International law recognises that human rights protections may need to be balanced against other human rights and legitimate interests. The Siracusa Principles state that non-absolute human rights may be subject to limitations only where the limitations are lawful, and can be demonstrably justified in a free and democratic society. The following factors are relevant to this assessment:

- whether the limitation is in pursuit of a legitimate purpose (this encompasses a range of lawful purposes).
- whether the limitation has a rational connection to the purpose to be achieved. This requires a reasoned and evidence-based explanation as to how the proposed approach is likely to be effective in achieving the legitimate purpose.
- whether the limitation on rights is necessary to achieve the legitimate purpose. This includes consideration of other reasonably available means to achieve the purpose that are restrictive of human rights; the extent of the interference with the human right; the presence of safeguards of controls over the measures adopted; and whether any affected groups are particularly at risk or may experience disproportionate impacts.³¹

Overarching recommendations to embed these standards

Develop principles for determining whether use of ADM is appropriate in government contexts

The Australian Government should adopt principles that will assist in determining whether or not a particular ADM system is acceptable for use in a government context.

There are several guiding considerations that are relevant here, and existing recommendations and literature that can be drawn upon.³² HTI proposes adopting the following synthesis of key principles.

ADM systems should be adopted only where there is a clear, demonstrated public benefit, and where any relevant risks can be effectively addressed. In particular, an ADM system should not be adopted if it presents an unjustified risk to human rights.

More specifically, an ADM system will be inappropriate for use by government when it:

- has an unjustified impact on the human rights of individuals or groups, especially in areas such as privacy protection (by reference to the Siracusa principles above)
- is likely to be unlawful or to produce unlawful outputs, due to the incorrect application of an existing law, or lack of legal basis
- automates or unduly influences the exercise of discretion, in the absence of exceptional circumstances

- compromises accuracy in decision making, including with respect to accuracy rates generally, and by reference to any demographic groups that are likely to be affected disproportionately
- cannot be guaranteed to apply the law in a manner that is consistent and foreseeable
- cannot produce a plain English explanation, and a technical explanation, for its decisions or other outputs
- is likely to have a significant adverse impact on Australia’s liberal-democratic system or to undermine public confidence in government administration.

The ADM assurance tool (recommended below) should embed these principles into its questionnaire and assessment process.

These points are fleshed out further in the remainder of the submission.

In its submission to the DISR consultation on mandatory guardrails, HTI also recommended giving the relevant Minister the power to designate certain AI systems or broader technology that pose a high or unacceptable risk. Through the current consultation process, the Attorney-General’s Department should consider identifying ADM systems or technologies that pose a high or unacceptable risk for use by government, to feed into the mandatory guardrails process, and the ADM framework.

Example: Facial Recognition Technology

Facial recognition technology (FRT) can carry a high risk of harm, because it can identify and extract a wealth of biometric and other sensitive personal information about an individual, often without their knowledge or consent. Some FRT systems have exhibited technical and operational problems – including issues with accuracy and bias.³³ FRT may also be used as a surveillance tool, or deployed for illegitimate or illegal purposes.³⁴ Particular risks arise when these tools are adopted in the policing context.³⁵

In its Model Law for FRT, HTI proposed an approach to classifying risk in the specific context of FRT, recognising that while some use are acceptable with the correct safeguards in place, others are unacceptable.

For example, some forms of FRT purport to be capable of assessing an individual’s emotional state and other sensitive characteristics such as one’s sexual orientation. HTI considers that such technology would pose an unjustifiable restriction on human rights if deployed to make decisions with a legal or similarly significant effect.

Recommendation 4

The ADM framework should outline clear principles for assessing whether an ADM system is appropriate for use by government, consistent with the following list. An ADM system will be inappropriate for use by government when it:

- **has an unjustified impact on the human rights of individuals or groups, especially in areas such as privacy protection (by reference to the Siracusa principles)**
- **is likely to be unlawful or to produce unlawful outputs, due to the incorrect application of an existing law, or lack of legal basis**

- **automates or unduly influences the exercise of discretion, in the absence of exceptional circumstances**
- **compromises accuracy in decision making, including with respect to accuracy rates generally, and by reference to any demographic groups that are likely to be affected disproportionately**
- **cannot be guaranteed to apply the law in a manner that is consistent and foreseeable**
- **cannot produce a plain English explanation, and a technical explanation, for its decisions or other outputs**
- **is likely to have a significant adverse impact on Australia's liberal-democratic system or to undermine public confidence in government administration.**

Audit legislative provisions that enable computer-made decisions

Legal authority to make administrative decisions and the scope of that authority is derived from legislation and common law. As outlined in the Consultation Paper, 46 separate provisions have been included in primary legislation, to enable administrative decisions to be made by 'a computer' for the purpose of that Act. Such provisions provide clear legal authority for the use of ADM to make administrative decisions in place of a human decision-maker.

These legislative provisions have been introduced on an ad hoc basis, and they are inconsistent. Some simply set out authority for the Secretary to use computer programs to make decision without further caveat,³⁶ while others provide different criteria and levels of detail about safeguards that need to be in place,³⁷ and when substituted decisions can or should be made.³⁸ As noted in the Consultation Paper, some incorporate administrative 'actions' and some do not.

The Robodebt Royal Commission Report observed:

Numerous Commonwealth laws have been amended to establish a basis for automated decision making, but these amendments have been piecemeal, across a wide body of legislation, and without the necessary further amendments establishing standards for which decisions should be automated and which should not; and appropriately designed systems for transparency, review and appeal.³⁹

Where decision-making power is effectively delegated to a computer, additional clarifications and safeguards are needed to ensure that legislative criteria and administrative law principles are met, due to self-evident differences between human and machine decision-making processes.

Drawing on the work of the Hon Justice Melissa Perry, writing extra judicially, HTI proposes some steps that would assist in improving these provisions. Before they are introduced, and in their drafting, it should be determined whether the delegation is appropriate in the first place (this should be done by reference to the criteria articulated in the above section). Additionally, it should be made clear what decisions or actions the provision applies to under the Act; which human(s) are ultimately responsible for the automated decisions; and what safeguards are needed to ensure the decisions are made fairly and lawfully (for example, human oversight, internal review etc.)⁴⁰

As part of a broader suite of legislative and policy reform to address ADM use by government, there should be an audit of existing laws that enable computer-made

decisions, and where necessary, an update of these laws to ensure a consistent approach, with appropriate safeguards.

Additionally, it may be appropriate for the Attorney-General's Department to release guidance for the formulation and drafting of future provisions of this nature, and for the Senate Standing Committee for the Scrutiny of Bills to apply a standard set of criteria when reviewing these provisions.

Recommendation 5

- **Before introducing a computer-delegation provision to Parliament, the Australian Government should clearly articulate why the delegation is appropriate under the relevant Act. The drafting of computer delegation provisions should also articulate:**
 - **what decisions and actions the provision applies to under the Act**
 - **which human(s) are ultimately responsible for the decision**
 - **safeguards to ensure that decisions are made fairly and lawfully.**
- **The Australian Government should conduct an audit of existing legislative computer delegation provisions against the above criteria. Amendments should be made where required.**
- **The Australian Government should develop guidance to assist in the formulation and drafting of future computer delegation provisions.**

Regulatory frameworks in subordinate legislation

Government departments and agencies that rely on ADM (such as Services Australia, Department of Home Affairs, and the Australian Tax Office) should be required to develop regulatory frameworks (for example, in subordinate legislation), outlining governance processes and accountability structures, and applying administrative law principles and human rights standards to ADM use within their remit. Police, national security and defence organisations should similarly develop regulatory frameworks for use of ADM in operational contexts.

Recommendation 6

Government departments and agencies (including police, national security and defence organisations) should develop regulatory frameworks to govern their use of ADM systems. The frameworks should incorporate governance and accountability processes, and outline how administrative law principles and human rights standards are to be applied under the relevant Act.

Comprehensive ADM assurance tool

Before adopting ADM systems, government departments should be required to complete a mandatory assurance process, to check systems against administrative law and human rights criteria, assess risks, and embed necessary safeguards.

The Australian Government has recently released the National Framework for the Assurance of AI in Government; however work is needed to develop a more comprehensive tool in the form of a questionnaire, that can apply set criteria at a system level, pre-adoption and at each stage of the ADM lifecycle, with dedicated avenues for expert review and approval. An assurance tool of this kind should adapt the NSW Government AI Assessment Framework, which has been in place in NSW since March 2022.⁴¹

Other useful resources include the Canadian Government's Algorithmic Impact Assessment tool,⁴² and the Commonwealth Ombudsman's 2019 *Automated decision-making better practice guide*, which includes a detailed checklist for government agencies against administrative law criteria.⁴³

A comprehensive assurance tool could assist in aligning compliance requirements for government across future AI mandatory guardrails, and the ADM framework. The tool could practically incorporate considerations relevant to both regimes, and streamline them into a singular process.

The assurance process, and the subsequent design, development and implementation of ADM systems should be conducted with input from a multidisciplinary team, that includes technical, legal, policy and frontline staff expertise. There should be specific requirements to obtain legal advice at key stages and keep records of this advice. This is important for ensuring the lawfulness of ADM tools – especially since legal language, which is often flexible and ambiguous, must be 'translated' into code, which can create gaps between the meaning of the law and how it is practically applied through an ADM system.⁴⁴

NSW AI Assessment Framework

The NSW AI Assessment Framework (AIAF) provides NSW Government agencies with a step-by-step risk assessment tool for their AI projects and systems.

The AIAF assesses AI risks against five mandatory AI ethics principles: community benefit, fairness, privacy and security, and transparency.

The AIAF prompts consideration and implementation of risk mitigations and safeguards, that correspond to the risks identified. The AIAF also requires the appointment of responsible officers to undertake different elements of AI project leadership, and oversee technical performance and data governance.

When an AI system is classified as high risk or higher through the AIAF, the AI system must be referred to the NSW AI Review Committee for assessment. The AI Review Committee is made up of a set of independent experts, that provide feedback and recommendations to improve the AI system.⁴⁵

Recommendation 7

The Australian Government should develop a mandatory assurance tool and process based on the NSW AI Assessment Framework and the NSW AI Review Committee. The tool should:

- **require early assessment and documentation of human rights and administrative law considerations and risks**
- **require the implementation of relevant safeguards**
- **incorporate an independent review and approval process.**

Specific administrative law considerations

Particular considerations and safeguards that should apply to the use of AI in decision making

There are specific administrative law concerns that can arise when AI (including machine learning systems, and generative AI) is used, in an automated or semi-automated way, as a material part of making administrative decisions.

AI systems have the capacity for independent development through machine learning, including in ways that are not necessarily foreseeable by the designers or users of these systems.

This means that AI systems may:

- evolve to apply the law differently over time, drifting from the correct (lawful) application of the law
- apply the law in a manner that is not foreseeable to affected individuals
- make inconsistent decisions over time in response to same inputs, leading to individuals with the same sets of circumstances receiving different outcomes. This undermines the principle of equality before the law
- embed hidden biases or replicate systemic biases due to poor quality or unrepresentative training data, which may compromise procedural fairness (specifically, the bias rule) and/or breach anti-discrimination laws
- elide accountability for decisions, since decisions can be made autonomously outside of pre-set programming, human responsibility for decisions can be obscured or undermined
- produce decisions that are not explainable to the affected individual, or to responsible staff, or to people with relevant technical expertise.⁴⁶

These concerns are compounded by the opacity of many AI systems, which renders it difficult to assess and mitigate these risks.

For these reasons, in line with the principles outlined above, AI systems should *not* be used to make administrative decisions, *unless* the AI system:

- can be demonstrably shown to align with the requirements of relevant underlying legislation, before deployment, and consistently over time. This requires ensuring that AI decisions and underlying decision-making processes (for example, the factors relied upon to make decisions and their weightings) are traceable and auditable
- can demonstrate no change over time to system outputs for common data inputs (unless a human made the change, or unless the change is clearly desirable, such as reducing error rates)
- can generate plain-English reasons and a technical explanation for an affected person, or enable a responsible human decision-maker to do so.

When AI systems do meet these criteria and are adopted, additional safeguards will also be required, including to mitigate potential for bias and/or discrimination, and to ensure human responsibility for AI decisions (as outlined in responses to the Consultation Questions below).

Recommendation 8

The Australian Government should not use AI, in an automated or semi-automated way, when it makes administrative decisions unless the AI system can be shown to:

- **align with the requirements of underlying legislation, before deployment and over time;**
- **demonstrate no negative or undesirable change over time to system outputs for common data inputs;**
- **generate reasons or a technical explanation for an affected person or enable a human decision-maker to do so.**

ADM systems should not be used to make discretionary decisions, other than in exceptional circumstances

ADM systems can support consistent and efficient decision making, which is one of the key benefits of adopting ADM in the right circumstances.

However, where discretionary factors apply to a part of the decision-making process, use of ADM systems for that aspect of the decision will be inappropriate as a general rule.

Discretionary decisions necessarily involve contextual interpretations and nuanced, individualised assessments. Such assessments should be made by a human decision-maker, assessing a particular case afresh, in light of the specific factual circumstances that arise, and the individual in question. As the Commonwealth Ombudsman has explained:

[Discretions] are a tool to avoid unfair or unjust outcomes that might otherwise result from inflexible application of a particular statutory provision and can help ensure decision-making is consistent with broader legislative and policy intent.⁴⁷

Expert systems involve the rigid application of pre-defined categories and procedures, while AI systems rely on finding patterns in existing data to make decisions, and are not capable of providing a fresh assessment on the individual merits of a case – no matter how sophisticated the system.⁴⁸ Additionally, human decision-makers that interact with both these kinds of systems may over-rely on system outputs, or have little practical room to maneuver due to operational or system constraints. An ADM tool that effectively results in a legal discretion being fettered or not applied at all, is likely to be unlawful.⁴⁹

Government regulators including the Commonwealth Ombudsman and the AHRC have urged government to take a cautious approach to the use of ADM to make discretionary decisions.⁵⁰ Additionally, both the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bill Committee have raised concerns regarding computer delegation provisions that apply to administrative decisions involving discretionary elements.⁵¹

Experts have also warned that the flattening of discretion through the use of ADM has the potential to disproportionately affect vulnerable individuals.⁵² For example, some legal regimes (including social security and migration laws) have provisions for consideration of special circumstances, such as family violence, when assessing applications and making decisions– which can lead to the provision of waivers, extensions or expedited processing.⁵³ This would not be sufficiently taken into account through ADM if it were adopted in that context.

It is also essential that discretionary factors are considered by human decision makers when *first instance* decisions are made. Individuals should not have to complain or seek review of a decision in order for discretionary factors to be applied to them. Not only would this be contrary to administrative law principles, but any harm caused by the original decision will have *already been suffered* by the individual, and most will not have the knowledge or inclination to seek review when a relevant discretion has not been applied in their case.

Nonetheless, ADM systems that prompt or assist human decision-makers to exercise their discretion may be acceptable where they do not pre-empt or narrow the discretion in practice. For example, an AI system that prompts a decision-maker to take into account special criteria that apply to an Aboriginal or Torres Strait Islander individual when determining access to a benefit or service, would be an appropriate use case.

There may also be very limited circumstances where automating discretionary decisions would arguably be acceptable from a human rights perspective. For example, it may be appropriate to automate the provision of emergency payments with narrow discretionary criteria that can be objectively assessed, after an environmental or health disaster occurs, in favour of individuals gaining quick access. Even in this scenario, there would need to be safeguards, such as ensuring the system favours beneficial outcomes for individuals, rather than rejections, and ensuring that there are human pathways of review available. If government does decide to use ADM to make discretionary decisions in discrete cases, the human rights justifications should be publicly documented.

Recommendation 9

ADM generally should not be used for any discretionary element of the decision-making process, nor should it be used where there is a likelihood that it will narrow the exercise of discretion, unless exceptional circumstances apply that justify its use on human rights grounds. The principle in this recommendation should be set out in law.

Use of ADM systems should not reverse the burden of proof, and individuals should not bear the brunt of ADM errors

There are particular risks of error associated with the adoption of ADM systems, especially when there is limited human oversight over these systems. For example:

- As occurred during Robodebt, erroneous decisions can be made rapidly and at a large scale, affecting many people.
- Small and simple errors (for example, incorrect inputs, coding errors, and data matching errors) may not be picked up at an early stage, or at all, due to limited human oversight, and limited transparency. This can result in unnecessary consequences and harms to individuals, which may not be easily discernible, and may take significant time and effort to undo.

Any ADM system adopted by government should be subject to ongoing testing against performance and accuracy metrics, so that errors can be proactively flagged at the system level. Additionally, ADM systems should rely on good quality data, supported by data governance requirements. The need for such safeguards is emphasised in the response to consultation questions 3-4 below.

There are further steps that should form part of an ADM framework to protect and inform individuals when errors do arise.

When human or technical mistakes are made through ADM systems, individuals may be held responsible for those mistakes by default, even where they are not provided with adequate information about the decision-making process to prove that an error has occurred. Robodebt was found to be unlawful because it shifted the ‘burden of proof’ onto individuals, who had to disprove the validity of the debts outlined in automated letters, without any information provided from government about how the debt was calculated.

Despite the lessons from Robodebt, eerily similar patterns have since *continued* in government contexts.

Example 1: In 2024 the Australian Tax Office (ATO) sent up to 200,000 boilerplate, automated letters to Australian tax payers and tax agents, stating that they had ‘on-hold’ historical tax debts. The letters did not provide detail about how or why the debts had arisen, and caused confusion and distress to recipients. Many of the debts were outside of the five-year retention period, making them difficult, if not impossible, to contest. The ATO has since apologised, stating that it is reviewing its approach.⁵⁴

Example 2: In 2022, civil society organisations began reporting that refugees on Safe Haven Enterprise Visas (SHEV) were being cut off Special Benefit without notification or explanation. Special Benefit is a payment of ‘last resort’ available to people in financial hardship with less than \$5000 to their name.

The cut-offs had occurred because Services Australia was relying on an automated system that used the original expiry dates on the SHEV as the date upon which to automatically cease payments. However, under migration law,⁵⁵ and per the Home Affairs system, when a person’s SHEV expires, if there is a delay in processing the renewal, the person is *still considered to be on a valid visa with associated entitlements*, pending visa renewal.

As a result of this error, refugees were left without payment for months – with some unable to afford medication and food.⁵⁶ Once the mistake was uncovered, the payments were not automatically reinstated—those affected were made to reapply.

Deliberate steps must be taken to prevent individuals from being held at fault in circumstances where such ADM errors are made. This includes circumstances when an individual has been presented with incorrect information generated by an ADM system, that they subsequently confirm, or rely upon to their detriment, trusting that it is accurate.

When ADM errors are identified by government, individuals who have been subjected to erroneous decisions should be informed as soon as possible. Otherwise, they have no way of knowing that they can rectify the issue or seek redress. The ADM framework should require Australian Government departments and agencies to inform affected individuals of known errors arising from ADM decisions.

Example 3: In 2023, a Commonwealth Ombudsman report found that ICT systems used by Services Australia had resulted in errors in up to 47,488 child support assessments. The Ombudsman rejected Services Australia’s initial approach, which involved only notifying two thirds of the affected cohort that they had been subject to erroneous assessments. The Ombudsman stated that:

Services Australia advised us that if a customer were to contact them to question the assessment, it would then review the assessment. In our view,

customers were not aware that an error caused by Services Australia's systems had occurred, so would likely not be aware they could exercise their rights to question an assessment. This approach created an unfairness between those customers who contacted Services Australia and those who didn't.⁵⁷

Recommendations 10

Government departments and agencies should be required to proactively monitor for errors in each of its ADM systems, including through ongoing accuracy and performance testing, before and after the ADM system is deployed.

Recommendation 11

The Australian Government should introduce legislation to provide that:

- **Individuals are not to be held responsible for errors in circumstances where the error was caused materially as a result of an ADM system (including a human official's interaction with an ADM system) or due to incorrect information generated and presented to the individual by government.**
- **Government departments and agencies are obliged to notify affected people when they have been subject to an ADM decision that has been affected by error.**

Specific human rights considerations

New technologies can, and do, lead to disproportionate harms, especially for people who already experience inequality or vulnerability--such as children, people with disability, and Aboriginal and Torres Strait Islander Australians.

In government contexts, ADM systems used in service provision directly affects people who are reliant on government support to meet essential needs, such as access to housing, healthcare, or funds to buy food and clothing. If these cohorts are not adequately considered when ADM is adopted, the downstream harms can be catastrophic, and deadly – as illustrated by suicides prompted by Robodebt letters. Additionally, ADM used to make decisions in high-stakes contexts like the justice system or migration system, can lead to vulnerable individuals being subjected to wrongful imprisonment, deportation, and exposed to physical and psychological harms.

The implications of ADM systems for vulnerable or marginalised cohorts should be considered at every stage of ADM adoption and use. Where there are significant vulnerable cohorts that may be affected by a particular system, there is a strong argument for caution — ADM may not be the appropriate avenue for government to choose. In particular, ADM systems that eliminate human providers are likely to be ill-suited for those who need more intensive support and guidance to navigate complex government systems.⁵⁸ At least, when ADM systems are implemented, there should be adequate access to human assistance, and alternative options to ADM systems where needed, because they will not work well for everyone in every circumstance.

The needs of at-risk groups must also be proactively addressed in the design of any ADM system that is ultimately adopted, to prevent discrimination and exclusions. For example, members of these cohorts are more likely to:

- be under-represented or over-represented in training data for AI systems, leading to biased, discriminatory or inaccurate decisions.

- face impenetrable obstacles filling out automated forms, or using portals such as MyGov, because their circumstances do not fit pre-existing categories, or because the ADM system doesn't account for their life circumstances. For example, a homeless person, or woman escaping family violence having no fixed address; or a recent immigrant lacking access to 'correct' identity documentation.
- make minor mistakes when interacting with an ADM system, that escalates into serious legal problems and compliance measures, because of a lack of human oversight, or a lack of accessible information.
- fail to access their legal rights, and 'fall through the cracks' in government systems, due to a lack of access to technology, such as mobile phones, or a lack of technological acumen needed to navigate services that rely heavily on automation and ADM systems, without human support options.

In order to reflect the needs of at risk, vulnerable and marginalised cohorts, early and genuine consultation with impacted groups should be required when government considers, adopts and tests ADM systems.

DISR's proposed mandatory guardrails stopped short of including a specific requirement for stakeholder consultation. In its submission to DISR, HTI recommended that consultation be made a mandatory guardrail for development and deployment of high-risk AI in the *government* context – given that government must act in the public interest, and due to its particular role in delivering critical services and entitlements to these groups. This same rule should apply within a broader ADM framework.

There are broader benefits of this for government, with consultation being an important method for building community trust in, and uptake of, government policies and services. Governments should be well placed to fulfil this requirement, with stakeholder engagement a common feature of public service.

Recommendation 12

The ADM framework should require government departments and agencies to proactively consider the needs of at-risk, vulnerable and marginalised cohorts when adopting, developing and using ADM systems, including through mandatory consultation with groups that are likely to be directly or disproportionately impacted.

Specific privacy considerations

Government necessarily collects extensive data from and about individuals, including highly sensitive information, for a diverse range of purposes, and uses within ADM systems. With this level of personal data collection and use, comes a significant level of risk. These includes risks arising from external threats, such as fraud and data breaches; and government's own misuse of data, including lawfully acquired data.

Most government uses of data are authorised by law, which means that consent processes, the default privacy safeguard, are not always required. Due to the absence of robust mechanisms enabling people to have some understanding and control over how their data is used; and laws that ensure ADM systems are processing data fairly; Australians can be effectively strongarmed into giving up their privacy as a condition of engaging with government.

In November 2024, HTI welcomed the passage of the first 'tranche' of reforms to the *Privacy Act 1988* (Cth).⁵⁹ While this is an important first step, the Australian Government has yet to implement the vast majority of its reform commitments –

including those pivotal to ensuring the safe and responsible use of ADM systems. HTI recommends that the Australian Government provide a clear and specific timeline for introducing the remaining reforms set out in the Attorney-General's Department Privacy Act Review Report and which were agreed to, or agreed to in principle by Government, within six months of the forthcoming federal election.

The ADM framework should ideally coincide with, and align with Privacy Act reforms. If Privacy Act reforms are not passed in a timely fashion, the ADM framework should nonetheless include a higher standard of privacy requirements for ADM systems, in line with relevant outstanding reforms.⁶⁰

The following privacy measures are particularly urgent, and should be reflected in the ADM framework.

Fair and reasonable test

The Australian Government has committed to implementing the 'fair and reasonable test'. The test would require those collecting and using personal information to act fairly and reasonably regardless of whether the individual, whose personal information they are dealing with, has provided their consent. The test would assist government to find a balance between the pursuit of legitimate public interest purposes that necessitate data sharing and use, and the protection of individual privacy.

Right to request meaningful information about ADM systems

The Australian Government has committed to implementing a right to request meaningful information about how substantially automated decisions with legal or similarly significant effect are made. Implementing this provision would provide individuals with an opportunity to better understand how automated decisions affect them, which in turn will enable them to exercise their rights in relation to the decision. It will also assist courts and regulators to review decisions.

Data use limitations, and data retention limits

AI systems are capable of processing, analysing and aggregating vast amounts of data in new ways, and it may be tempting for government to use ADM for purposes that were unforeseen at the time of the initial data collection, and in ways that arbitrarily interfere with people's right to privacy, and other human rights.

The Robodebt Scheme was itself made possible because the (then) Department of Human Services (DHS) changed its policies on document retention in 2012, and from that point forward did not destroy PAYG matched data it received from the ATO. In evidence to the Royal Commission, officials at the time concluded that DHS had 'gold mines' of historical data in its possession that it could trawl for potential debt.⁶¹ This was in contravention of the relevant data matching protocols in place at the time.⁶²

The ADM framework should incorporate sensible data use limitations, as well as data retention limits, to ensure that data is used for appropriate purposes, and is not retained longer than required to fulfill those purposes. This should align with existing Australian Privacy Principles (APP), such as APP 6, which provides that APP entities must only use or disclose personal information for a particular purpose for which it is collected, unless an exception applies.⁶³

These measures are also needed for the maintenance of trust in government institutions. When data is collected ostensibly for a benign or beneficial purpose, but is also used for an unrelated purpose, such as enforcing compliance measures, this will inevitably undermine trust, and compromise the functioning of government schemes. This has been proven time and again in Australia, with clear examples including the public outcry in response to overly permissive data-sharing provisions in the My Health

Record scheme, and subsequent opt-outs,⁶⁴ and in respect of COVID tracing app data that were accessed by police departments.⁶⁵

Provisions for consent and opt outs

Wherever possible, individuals should be provided with clearly communicated opportunities to opt-out of ADM systems, and to exercise genuine choices about how their data is used. As a general rule, opt outs should be available when the data collection or ADM processing is not strictly necessary to realise government's operational requirements.

A positive example of this in practice is the Digital ID Scheme – the scheme is voluntary for individuals, and this is clearly outlined in the *Digital ID Act 2024 (Cth)*, alongside requirements for providers ensure that individuals are not unduly disadvantaged if they choose to opt out.⁶⁶

Similarly, when data is shared or ADM used for the sake of user convenience or benefit (such as targeted or personalised services), consent should not be assumed. For example, some people who experience family violence may prefer to share this information with a range of agencies, so that they do not have to keep repeating their stories, while others may prefer to disclose only as necessary.

Recommendation 13

- **the Australian Government should commit to introducing the remaining reforms set out in the Attorney-General's Department Privacy Act Review Report and which the Government agreed to, or agreed to in principle, within six months of the forthcoming federal election**
- **the ADM framework should integrate privacy and data protection requirements as outlined in the Privacy Act, and in relevant outstanding privacy reform recommendations, to apply across the lifecycle of ADM systems.**

[Invest in public service staff and support oversight bodies](#)

Public service staff

The widespread adoption of ADM systems requires a corresponding investment in capability building with Australian Public Service (APS) staff that are required to interact with, monitor, and challenge ADM decisions.

The success of ADM systems is largely dependent on humans and machines working together in tandem to make better decisions. This can only occur if the human is properly supported to understand both the technical decision-making processes they are engaging with (including a realistic understanding of the system's strengths and limits) *and* the underlying law they are administering.

In the short term, a significant uplift in training for APS staff and contractors across Government, should be a priority. This should include training on human-centred AI/ADM principles and practices, as well as training on the ADM systems staff are required to engage with. In the long term, staff should continue to be supported to build expertise over time.

Before adopting an ADM system, government agencies should be required to provide:

- proof that staff have expertise in human-centred or responsible AI/ADM principles and be able to apply them to the ADM systems they are overseeing, or

- the provision of adequate training to upskill their staff with this expertise

As Robodebt illustrated, in government contexts that incentivise efficiency as the primary goal, humans may have limited motivation, opportunity or power, to disrupt highly prescriptive processes dominated by automated systems. This in turn leads to a reduction in administrative and professional discretion, and a loss of legitimacy for government institutions.⁶⁷ From the top down, staff should be supported to exercise independent discretion and judgement, and raise concerns up the chain. This may require changes to management structures and incentives within agencies. Overall, a culture shift throughout the APS is needed.

Relatedly, APS staff should be consulted when ADM systems are developed, and proactively involved in co-design processes. HTI and Essential Research's joint report *Invisible Bystanders*, collated research conducted with workers from different sectors engaging with AI, including APS workers.⁶⁸ The report concluded that if organisations do not consult with staff, they may not benefit from their expertise, which can lead to poorer adoption and implementation of AI systems, and increased governance risks.

Recommendation 14

- **The Australian Government should invest in training APS staff so they can engage in human review of ADM decisions, with an understanding of ADM technology they work with, the underlying law, and the application of human-centred AI principles.**
- **Government departments and agencies should consult with staff before adopting ADM systems that staff will interact with, or rely upon, to make decisions.**

Independent oversight bodies

To promote accountability in the context of widespread ADM adoption by government, Federal oversight bodies and regulators, such as the Commonwealth Ombudsman, the Administrative Review Council, and the Office of the Australian Privacy Commissioner, must be provided with the resources and powers needed to apply the law effectively, undertake proactive investigations, hold government to account when unlawful or otherwise harmful systems are implemented, and provide redress to individuals who have been impacted by these systems.

HTI has also previously recommended the creation of an AI Commissioner or AI Safety Commissioner role. The AI Commissioner would provide independent expert advice (including legal, policy and technical knowledge) on AI to government departments, agencies and regulators; and support a coordinated approach to implementing AI reforms, across the whole of government.⁶⁹

Recommendation 15

- **The Australian Government should consult with federal regulators and oversight bodies (including the OAIC, the Commonwealth Ombudsman, and the ARC) in order to support them to provide guidance on the ADM framework, investigate government use of ADM, and enforce the law effectively.**
- **The Australian Government should establish an AI Commissioner to provide independent expert advice to government and regulators and support a coordinated approach to AI reforms**

Answers to consultation questions

1. How should the need for transparency about the use of ADM be balanced with the need to protect sensitive information about business processes and systems?

As recommended in the Robodebt Royal Commission Report, where possible, government should release the business rules, algorithms and operating procedures associated with ADM systems, to improve accountability and enable testing by external parties.

Government departments have elsewhere expressed concerns that if information about certain systems were released, it would enable the 'gaming' of these systems by bad faith actors.⁷⁰

When this argument is made, the logic behind the assertion should be recorded and supported by proof, and open to interrogation by relevant oversight bodies upon request, to ensure that transparency is not being arbitrarily denied due to an abstract or unlikely risk.

There will be some circumstances where it is inappropriate to release specific business rules or algorithms, such as when ADM is used in sensitive contexts (such as identifying sophisticated fraud attempts). In these circumstances, *total* transparency may not be advisable, but other information can be released without compromising operational concerns. In these cases, Government should publicise:

- information that an ADM system is in use, and its purpose
- summaries of risk assessments and relevant safeguards
- information about the types of personal information used within the ADM system
- the outcomes of ongoing audits and testing on key metrics such as accuracy and bias.

2. What transparency rules would be appropriate to build into the framework?

There are a number of transparency measures that can be implemented across the board when government actors adopt ADM systems. These include:

Implementing Robodebt recommendation 17.1 including by publishing business rules and algorithms where possible.

Creating a public register of ADM systems: The National Framework for assurance of AI in Government, under the 'Transparency and Explainability' principle, states that governments should maintain a register of when it uses AI, its purpose, intended uses, and limitations.⁷¹ A centralised public register of ADM systems, that include business rules / algorithms, where and when the system is used, and key documentation such as risk assessment materials (or a summary of those materials) and associated safeguards, would align with this principle.

Australia can draw on the approaches taken to similar registers overseas. For example, in the United Kingdom, the Department for Science, Technology and Innovation has developed an algorithmic transparency recording standard, and public register. The standard and publication on the register has been made mandatory for all government departments.⁷²

Updating freedom of information laws and processes. The adoption of ADM across government systems creates an added layer of complexity within already complex bureaucracies, and can undermine open government principles.

In their submissions to the Robodebt Royal Commission, legal assistance services explained that they needed to rely on freedom of information requests to understand how debts were calculated, yet noted that these requests were regularly denied, and when information was provided, it was often incomprehensible.⁷³

Cabinet documents are, by virtue of section 34 of the *Freedom of Information Act 1982* (Cth) exempt as a class from disclosure. The Royal Commission suggested that this section be repealed, yet government chose not to proceed with this reform.⁷⁴ Academic commentators have also observed that other FOI exemptions (such as the commercial-in-confidence / trade secret exemption) are expansively invoked by agencies to avoid having to disclose information about ADM systems.⁷⁵

For these reasons, the Australian Government should consider updating Freedom of Information laws and processes to counteract the increased opacity associated with widespread ADM adoption.

Recommendation 16

- **The ADM framework should embed the following transparency measures:**
 - **a centralised public register of ADM systems used across the Australian Government.**
 - **A requirement to publish business rules and algorithms, except in circumstances where this will objectively compromise the operation of the system or undermine its objectives**
 - **requirements to publish information about the ADM system and its purpose; risk assessments, or summaries of risk assessments; the kinds of personal data in use by the system; and the outcomes of audits and tests.**
- **The Australian Government should consider updating Freedom of Information laws to address ADM-related transparency concerns identified through the Robodebt Royal Commission.**

3. What pre-implementation safeguards should apply where ADM is intended to be used?

Relevant proposed mandatory guardrails:

- **Guardrail 1: Establish, implement and publish an accountability process including governance, internal capability and a strategy for regulatory compliance**
- **Guardrail 2: Establish and implement a risk management process to identify and mitigate risk**
- **Guardrail 3: Protect AI systems and implement data governance measures to manage data quality and provenance**

See recommendations 4, 5, 6, and 7.

Additionally, government departments and agencies should develop procurement guidelines to ensure that private sector AI/ADM products and services engaged by government meet key administrative law and human rights criteria. These requirements

should also ensure that vendors are capable of providing sufficient transparency over ADM systems, and can deliver or accommodate, for example, ongoing updates, testing and third-party audits.

4. What system-level safeguards should be required to ensure that ADM operates appropriately?

Relevant proposed mandatory guardrails:

- Guardrail 4: Test AI models and systems to evaluate model performance and monitor the system once deployed.
- Guardrail 9: Keep and maintain records to allow third parties to assess compliance with guardrails

See recommendation 10.

As outlined in the Consultation Paper, other system-level safeguards should include the following:

- keep and maintain internal records, tracking ADM system use, performance and decision outcomes, including for the purposes of third-party audits, and review by oversight bodies
- ensure interoperability with existing ICT systems
- update the ADM system across its lifecycle.

The Consultation Paper also suggests the below system-level controls:

- *requiring the person who authorises or controls the system to take reasonable steps to ensure that automated decisions are consistent with the objects of the Act and based on grounds or information on which an officer could have made that decision, or*
- *requiring the person who authorises or controls the automated system to be satisfied that the system would be programmed to comply with administrative law standards.*

The relevant government agency or department should be responsible for taking a range of steps to ensure that automated systems and decisions are lawful, and particular individuals, including the Secretary, will have various accountabilities to ensure that this process is undertaken, across the organisation. However, the individual responsible for specific automated decisions made through an ADM system should be responsible in the same way as they would be had they made the decision themselves. Either they are responsible for an unlawful decision, or they are not.

5. What decision-level safeguards should there be for persons affected by decisions made using ADM?

Relevant proposed mandatory guardrails

- Guardrail 5: Enable human control or intervention in an AI system to achieve meaningful human oversight
- Guardrail 6: Inform end-users regarding AI-enabled decisions, interactions with AI and AI-generated content

Explanations and reasons for decisions

It is always good practice, and it is sometimes required by law, to produce reasons or an explanation for administrative decisions.⁷⁶ For example, the *Administrative Review Tribunal Act 2024* (Cth) (ART Act) provides that a person may obtain reasons for most decisions to which the Act applies and the *Administrative Decisions (Judicial Review) Act 1997* (Cth) provides that reasons may be obtained for a broad range of other Commonwealth administrative decisions.

When an administrative decision is made affecting a person's legal rights or having a similarly significant effect, the person should be provided with an explanation of the legal and factual basis for the decision, and how to seek review of the decision. The explanation should be in writing, and in plain language. The purpose of the explanation should be to equip a person to exercise their legal rights in relation to the decision, should they wish to do so. ADM explanations 'must be geared towards challenging decisions more than justifying them'.⁷⁷

Explanations of this kind should be the standard regardless of whether a decision was automated or made entirely by a human. The explanation should be provided when an individual is first notified of the decision, without the need to take additional steps.

ADM systems may not always be well-equipped to generate these kinds of explanations. Professor Terry Carney has observed that:

[A] lack of explanation is understandable because reasoned explanation is neither easy to program to auto-generate nor core to AI technology. Providing adequate reasons for decisions to the standard expected for legal review is therefore a real challenge for AI systems designers. This is because their brief tends to be merely ensuring 'explainability' of the workings of the AI system of rules, algorithms and so forth, rather than production of 'reasoned justification' in the individual case.⁷⁸

Similarly, when human officials are relied upon to provide explanations for ADM system decisions, they may also face difficulties providing an explanation to an adequate standard, particularly where they lack insight into the technical workings of an opaque 'black box' system.

Recommendation 8 (regarding explanations and reasons) would address these concerns.

Additionally, individuals should be able to request information, including 'meaningful' technical information about ADM decisions, after the fact (in line with the Privacy Review Report recommendations discussed above).

HTI also recommends adopting recommendations made by the AHRC, to require notification when ADM is materially used in making an administrative decision, and to make clear in law that, when a person has a legal entitlement to reasons for a decision, this entitlement exists regardless of how the decision was made.

Recommendation 17

- **Government agencies and departments should be required to notify affected individuals where ADM is materially used in making an administrative decision. That notification should include information regarding how an affected individual can challenge the decision.**

Recommendation 18

- **The Australian Government should make clear that, where a person has a legal entitlement to reasons for a decision, this entitlement exists regardless of how the decision is made.**
 - **To this end, relevant legislation including s 25D of the *Acts Interpretation Act 1901* (Cth) should be amended to provide that:**
 - **where a person has a right to reasons the person is entitled also to a technical explanation of the decision, in a form that could be assessed and validated by a person with relevant technical expertise**
 - **the decision maker must provide this technical explanation to the person within a reasonable time following any valid request.**

Human oversight

Human oversight is one of a number of important safeguards to ensure fair and accurate decision making.

Whether a decision can be made without human involvement, and when human involvement is needed, should be contextual assessments.

Generally speaking, a human should always provide oversight prior to a decision being made, when:

- decisions may have a significant impact on a person's human rights (for example, a decision to reject a visa, or prolong a person's parole, should never be made without human oversight)
- there are discretionary considerations involved, or nuanced individual factors that need to be taken into account
- there is a risk of error that is capable of being mitigated though human oversight. For example, tools that transcribe or summarise phone conversations may not be consistently accurate, and may require a human eye to verify.

Conversely, human oversight may not be required to oversee ADM systems that:

- apply simple processes to administer clear legal rules, with relatively low risk of impact on rights. For example, ADM systems that assess straightforward eligibility criteria for a licence or grant, such as age and location
- result in objectively beneficial outcomes for individuals (e.g. decisions to grant benefits or access to services may not need to be checked by a human, while rejections should be checked).

Regarding the latter point, the Consultation Paper suggests that 'human referral pathways' may enable beneficial decisions to be automated, while detrimental ones are referred to a human. This is a practical approach. The Consultation Paper states that such pathways may not always be appropriate such as where 'referral will not change the outcome of a particular decision'. It is worth noting that human oversight is a safeguard against incorrect decisions, among other things – if a decision is incorrect then a human *should* be able to correct it, and this will often only become apparent once the decision has been referred to a human for checking.

When a decision-making process is wholly automated, there should always be certain safeguards in place, including:

- a responsible decision maker allocated to the decision in question – for example, this human can handle subsequent requests for internal review

- intermittent human checks – for example, it may be good practice for a small percentage of wholly automated decisions to be sent to humans for review

All of these considerations should be factored into the design of ADM systems from the outset, so that they can operate in conjunction with human oversight by staff. ADM systems should be sufficiently accessible and understandable to staff; and they should enable the adaptation or substitution of input data and decisions in a straightforward manner. There is also a need for significant investment in training for APS staff to ensure human oversight is effective in practice (recommendation 14).

Approach to substituted decision making

The Consultation Paper includes an extended focus on whether and when it is appropriate to enable substituted decision making. HTI cautions against an approach that over-complicates the issue by prescribing a range of rules for when substituted decision making is acceptable in different government contexts.

As a general principle, the relevant accountable human official or delegate should be able to substitute an automated decision for a correct or preferable decision when an error or other substantive concern is identified, unless this substitution would compromise the integrity of the decision-making process. In other words, substituted decisions should not be *less* accurate than the automated decision, and the choice to substitute a decision should not undermine human rights principles (for example, a beneficial automated decision should not be substituted for a detrimental substituted decision unless there are clear and justifiable grounds for doing so). Where a decision has been made *not* to substitute an incorrect decision (for example, if the substitution would not change the outcome) this should be documented by the decision maker.

Recommendation 19

Through the ADM framework, the Australian Government should:

- **ensure that there is genuine human oversight where ADM is used to make a decision that may adversely affect an individual’s legal rights or have other significant impacts; where there is an element of discretion involved; and in circumstances where there is a significant risk of error**
- **ensure that this is a process for a responsible human to check a decision where appropriate**
- **enable substitution of decisions by human decision makers, in circumstances where the substitution will not compromise the integrity of the initial decision (i.e. will not be less accurate, or contrary to human rights principles)**
- **ensure that ADM systems are designed to enable interventions and reversals by human staff in an accessible manner.**

6. What post-decision safeguards should there be to allow a decision to be challenged after it has been made?

Relevant proposed mandatory guardrail

- Guardrail 7: Establish processes for people impacted by AI systems to challenge use or outcomes

Internal review and complaints

When an individual wishes to challenge an administrative decision that affects them, there should ideally be an internal review pathway available as a first step. Government agencies and departments should consider how to improve the availability and accessibility of internal review processes, particularly when decisions are being made at scale through ADM. This is especially important since most people will not seek merit review – this is illustrated by the statistic that only five out of every 10,000 Robodebts were reviewed by the AAT.⁷⁹

Agencies should inform individuals that they can seek internal review of decisions when they notify them of the decision, create a dedicated review phonenumber and/or online portal for individuals to request review, record any requests, assign a human reviewer and share relevant documentation about the decision with the reviewer. The human reviewer should be required to conduct a review within a reasonable time period. Throughout, there should be internal tracking of the decision-making and review process, and open communication with the individual about the status of the request and the timeline for review.

Internal reviewers and agency staff should also be encouraged and supported by management to flag patterns of errors or other systemic issues, and raise them with senior officials. This would allow systemic problems to be identified and addressed at an early stage, and lessen the burden of staff who may be dealing with multiple requests about the same underlying issue.

In addition to an internal review pathway, agencies should also ensure that individuals can seek more information about decisions made, or otherwise provide complaints or feedback about the decision-making process, including anonymously. This would be a way to identify and address technical problems with ADM systems, and the internal organisational processes that surround them. An option to provide anonymous feedback should also be open to staff who may not wish to openly flag concerns to superiors.

Complaints, feedback and review data should be available to oversight bodies such as the Commonwealth Ombudsman upon request.

Recommendation 20

Through the ADM framework, the Australian Government should ensure that government departments and agencies:

- **develop accessible pathways for internal review of ADM decisions**
- **encourage and support APS staff to provide information about system errors or patterns of complaints that indicate systemic issues to senior officials**
- **develop complaints and feedback mechanisms available for affected individuals and staff to utilise, with options for anonymity**
- **record data on the above, and make it available upon request to relevant external oversight bodies.**

Merits review

To ensure that rights to review are not arbitrarily lost, the Australian Government should consider whether amendments to existing laws are needed to ensure that external review is available for ADM decisions in circumstances where it would otherwise be available if the decision were made by a human.

Commentators have noted that ADM poses challenges to traditional administrative justice processes, since issues with ADM decisions tend to extend beyond *individual* decisions, and to the structure of algorithmic systems themselves.⁸⁰ Systemic issues with ADM systems are not always readily flagged or addressed in a holistic manner through merits review. This was made apparent through Robodebt, where a number of decisions were overturned by ‘Tier 1’ of the Administrative Appeals Tribunal, but this did not translate into any tangible action until a challenge reached the Federal Court years later.

Last year, the Australian Government passed legislation to replace the Administrative Appeals Tribunal with the Administrative Review Tribunal, and re-institute the Administrative Review Council. The legislation also sets up an internal ‘Guidance and Appeal Panel’ that can review any matter involving systemic issues or Tribunal decisions that may be affected by error.⁸¹

This new structure provides opportunities to address systemic ADM problems identified through merits review matters. In line with recommendation 15, to support these new functions, steps can be taken such as:

- enabling ART members to call on external experts or standing panels in cases involving complex technical systems
- training ART members on ADM systems
- requiring the ART registry to collect and report data on ADM matters to the ARC
- providing sufficient funding and human resources to the ART and ARC.

Additionally, in order for individuals to be able to exercise their rights of review, they need access to free and independent legal advice, as recognised by the Robodebt Royal Commission Report. This requires ongoing, dedicated funding to legal aid and community legal services to bring merits review cases before the ART, across government decision-making areas.

Recommendation 21

The Australian Government should assess whether amendments to laws are needed to guarantee access to merits review in circumstances where the decision would be reviewable if made by a human decision-maker.

7. Should individuals be notified of the use of ADM? If so, should notification be required at a specific point in the decision-making process, or should flexibility be provided to agencies?

Relevant proposed mandatory guardrail

- Guardrail 6: Inform end-users regarding AI-enabled decisions, interactions with AI and AI-generated content

See recommendations 8, 17 and 18.

Where there is an opportunity for individuals to opt out of ADM decisions, there should be pre-decision notification that ADM will be used in the decision-making process, so that individuals can provide informed consent to proceed. Otherwise, they should be notified of the use of ADM when they are notified of the decision.

Where government communications are wholly automated, individuals should also be informed of this (for example, ‘this letter is an automated letter’, ‘this is an AI chat bot’). This is important as it provides context to individuals about the communication,

including clues as to why potential errors may have arisen, and may inform their decision to seek human assistance, or opt-out of automated processes where feasible.

8. Should there be any exemptions to ADM safeguards? If so, what exemptions should be included and why?

HTI opposes general exemptions to ADM safeguards, particularly where those exemptions are granted to a class of organisations (for example, an exemption for 'national security organisations').

As a general principle, laws and regulations that are intended to protect the community – especially those that aim to uphold human rights – should apply to all legal persons. A person should be permitted to derogate from those protections only to the minimum extent necessary to pursue a lawful objective.

Exemptions that relieve government entities from a responsibility to comply with ADM safeguards would undermine government accountability, and put people at risk of harm, particularly when ADM is used in high-stakes decision-making contexts. Broad exemptions would prevent sensible requirements to ensure that such uses of ADM are safe; including basic steps to test these systems, conduct risk management processes, and mitigate potential harms, such as discrimination.

If exemptions are to be granted, they should be made on a case-by-case basis. Exemptions should generally be managed through an independent adjudicative process to consider a detailed application from government entities and decide whether the application should be granted. Each application should be considered on its merits, in a similar way to the operation of a warrant scheme.

Recommendation 22

The ADM framework should not carve out broad exemptions for government bodies. Where a government body considers that an exemption is needed, there should be an independent adjudicative process to consider an application and decide whether the application should be granted, and on what terms.

9. Should safeguards be different depending on the risks associated with the use of ADM for a particular decision or administrative action?

As outlined above, the ADM framework, like the proposed mandatory guardrails, should adopt a risk-based approach to classifying and responding to AI/ADM systems, with corresponding safeguards. HTI acknowledges that the mandatory guardrails are designed to apply to high-risk AI only. On the other hand, the scope of the ADM framework may be inclusive of ADM systems that do not meet the 'high-risk' definition in the mandatory guardrails, applying more broadly to other risk levels. Once the mandatory guardrails are finalised, some work will need to be undertaken to align the two frameworks, taking into account this potential diversion.

¹ See 'Policy for responsible use of AI in government' *Australian Government Architecture* (Web Page) <<https://architecture.digital.gov.au/responsible-use-of-AI-in-government>>; Department of Finance, *National framework for the assurance of AI in government* (June 2024) <<https://www.finance.gov.au/government/public-data/data-and-digital-ministers-meeting/national-framework-assurance-artificial-intelligence-government>>.

² See Attorney-General's Department, *Privacy Act Review Report* (February 2023) <<https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>>; 'Copyright and Artificial Intelligence Group (CAIRG)', *Attorney-General's Department* (Web

Page) <<https://www.ag.gov.au/rights-and-protections/copyright/copyright-and-artificialintelligence-reference-group-cairg>>.

³ Human Technology Institute, Submission to the Department of Industry, Science and Resources, *Discussion Paper on Safe and Responsible AI in Australia*, August 2023, Recommendation 1 <<https://www.uts.edu.au/human-technology-institute/news/hti-submission-disr-discussion-paper>>.

⁴ Human Technology Institute, submission to the Department of Industry, Science and Resources, *Safe and Responsible AI in Australia: Proposals Paper for introducing mandatory guardrails in high-risk settings*, 4 October 2024 <<https://www.uts.edu.au/sites/default/files/2024-10/HTI-submission-DISR-mandatory-guardrails-proposals-paper.pdf>>

⁵ See, e.g., Productivity Commission, *Making the most of the AI opportunity: productivity, regulation and data access* (Research papers, February 2024) <<https://www.pc.gov.au/research/completed/making-the-most-of-the-ai-opportunity>>; UK Government Department for Science, Innovation and Technology, *A pro-innovation approach to AI regulation* (February 2024) 21 <<https://assets.publishing.service.gov.uk/media/65c1e399c43191000d1a45f4/a-pro-innovation-approach-to-ai-regulation-amended-governement-respone-web-ready.pdf>>.

⁶ See e.g. Australian Government, *Data and digital government strategy* (December 2023) <<https://www.dataanddigital.gov.au/>>.

⁷ See e.g. NSW Ombudsman, *A map of automated decision making in the NSW public sector: A special report to Parliament* (March 2024) <<https://www.ombo.nsw.gov.au/reports/report-to-parliament/a-map-of-automated-decision-making-in-the-nsw-public-sector-a-special-report-to-parliament>>.

⁸ Human Technology Institute, Submission to the Department of Industry, Science and Resources, *Discussion Paper on Safe and Responsible AI in Australia*, August 2023, 7 <<https://www.uts.edu.au/human-technology-institute/news/hti-submission-disr-discussion-paper>>.

⁹ Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 38.

¹⁰ Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 39.

¹¹ *Artificial Intelligence Act*, Regulation (EU) 2024/1689, Art 3.

¹² Australian Government, *Government response to the Privacy Act Review Report* (September 2023) 11. <<https://www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF>>; Department of Industry, Science and Resources, *Safe and Responsible AI in Australia: Proposals Paper for introducing mandatory guardrails in high-risk settings* (September 2024) 19 <https://storage.googleapis.com/converlens-au-industry/industry/p/prj2f6f02ebfe6a8190c7bdc/page/proposals_paper_for_introducing_mandatory_guardrails_for_ai_in_high_risk_settings.pdf>.

¹³ Article 29, Data Protection Working Party, *Guidelines on Automated individual decisionmaking and Profiling for the purposes of Regulation 2016/679* (February 2018) 21.

¹⁴ Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 38.

¹⁵ Attorney-General's Department, *Use of automated decision-making by government* (Consultation paper, November 2024) 8.

¹⁶ See, e.g., Scarlet Wilcock 'Policing Welfare: Risk, Gender and Criminality' *International Journal for Crime, Justice and Social Democracy* (2016) 120.

¹⁷ This tool has been critiqued for lacking accuracy and transparency, as well as being not fit for purpose to meet the needs of Job Seekers. See Economic Justice Australia supplementary submission no 153 to Select Committee on Workforce Australia Employment Services, *Inquiry into Workforce Australia and Employment Services* 17 May 2023 <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Former_Committees/Workforce_Australia_Employment_Services/WorkforceAustralia/Submissions>; Brooke Ann Coco, Paul Henman and Lyndal Sleep, *Mapping ADM in Australian Social Services* (ADM+S Working Paper 6, ARC Centre of Excellence for Automated Decision-Making and Society) 49; Department of Employment and Workplace Relations, Submission No 254 to the Select Committee on Workforce Australia, *Inquiry into Workforce Australia and Employment Services* (March 2023) 54.

¹⁸ See Simone Casey, 'Towards digital dole parole: A review of digital self-service initiatives in Australian employment services' *Australian Journal of Social Issues* (2021) 57(1), 121.

¹⁹ *Pintarich v Deputy Commissioner of Taxation* [2018] FCAFC 79.

²⁰ *Pintarich v Deputy Commissioner of Taxation* [2018] FCAFC 79 [140].

²¹ Anna Huggins, 'Addressing disconnection: Automated decision-making, administrative law and regulatory reform' *UNSW Law Journal* (2021) 44(3) 1064 <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/09/Issue-443_final_Huggins_v2.pdf>.

²² Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 71.

²³ *Pintarich v Deputy Commissioner of Taxation* [2018] FCAFC 79 [51] (Justice Kerr, dissent).

²⁴ Anna Huggins, 'Addressing disconnection: Automated decision-making, administrative law and regulatory reform' *UNSW Law Journal* (2021) 44(3) 1059 <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/09/Issue-443_final_Huggins_v2.pdf>.

²⁵ See Commonwealth Ombudsman, *Automated decision-making: Better practice guide* (2019)

<https://www.ombudsman.gov.au/_data/assets/pdf_file/0029/288236/OMB1188-Automated-Decision-Making-Report_Final-A1898885.pdf>.

²⁶ See, eg, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *Sex Discrimination Act 1984* (Cth), *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth), *Age Discrimination Act 2004* (Cth).

²⁷ Philip Alston, 'Report by of the Special Rapporteur on extreme poverty and human rights' (2019), UN Doc A/74/493 (October 2019) [3].

²⁸ Philip Alston, 'Report by of the Special Rapporteur on extreme poverty and human rights' (2019), UN Doc A/74/493 (October 2019) [63].

²⁹ See Janina Boughey, 'Outsourcing Automation: Locking the 'black box' inside a Safe' in Janina Boughey and Katie Miller (eds), *The Automated State: Implications, Opportunities and Challenges for Public Law* (Federation Press, 2021) 139-40; *O'Brien v Secretary, Department Communities and Justice* [2022] NSWCATAD 100, [89].

³⁰ Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 82.

³¹ Adapted from: Parliamentary Joint Committee on Human Rights (Commonwealth), *Guidance Note 1: Drafting statements of compatibility* (Guidance Note, December 2014); UN Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4 (28 September 1984).

³² These include, for example: Commonwealth Ombudsman, *Automated decision-making: Better practice guide* (2019) <https://www.ombudsman.gov.au/data/assets/pdf_file/0029/288236/OMB1188-Automated-Decision-Making-Report_Final-A1898885.pdf>; Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021); Melissa Pery, 'iDecide: Digital pathways to decisions' (Speech at CPD Immigration Law Conference, Canberra, 21-23 March 2019) <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20190321>>.

³³ Samuel Dooley et al., 'Comparing Human and Machine Bias in Face Recognition' (Research Paper, arXiv Computer Vision and Pattern Recognition, 15 October 2021) <<http://arxiv.org/abs/2110.08396>>.

³⁴ Nicholas Davis, Lauren Perry and Edward Santow, *Facial recognition technology: Towards a model law* (Report, September 2022)

³⁵ See e.g. *R (on the application of Edward Bridges) v The Chief Constable of South Wales Police* [2020] EWCA Civ 1058.

³⁶ *Social Security (Administration) Act 1999* (Cth) s 6A.

³⁷ *Telecommunications Amendment (SMS Sender ID Register) Act 2024* s 484K.

³⁸ Some legislative instruments allow the secretary to substitute a decision if they are satisfied the computer is incorrect (e.g., the *Export Control Act 2020* (Cth) and Air Navigation regulations) while others allow substitution if specific prescribed criteria are met such as the computer program not functioning correctly and the substituted decision is more favourable to applicants (e.g., *Migration Act 1958* (Cth) s 495B(1); *Australian Citizenship Act 2007* (Cth) s 49(3)).

³⁹ Royal Commission into the Robodebt Scheme, Final Report (July 2023) 485.

⁴⁰ See the questions outlined by Justice Melissa Pery, writing extra-judicially: Melissa Pery, 'iDecide: Digital pathways to decisions' (Speech at CPD Immigration Law Conference, Canberra, 21-23 March 2019) <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20190321>>.

⁴¹ NSW Government, *NSW Artificial Intelligence Assessment Framework* (2024)

<<https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assessment-framework>>.

⁴² Government of Canada, *Algorithmic Impact Assessment* (2024) <<https://open.canada.ca/data/en/dataset/5423054a-093c-4239-85be-fa0b36ae0b2e>>.

⁴³ Commonwealth Ombudsman, *Automated decision-making: Better practice guide* (2019)

<https://www.ombudsman.gov.au/data/assets/pdf_file/0029/288236/OMB1188-Automated-Decision-Making-Report_Final-A1898885.pdf>.

⁴⁴ Melissa Pery, 'iDecide: Digital pathways to decisions' (Speech at CPD Immigration Law Conference, Canberra, 21-23 March 2019) <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20190321>>.

⁴⁵ NSW Government, *NSW Artificial Intelligence Assessment Framework* (2024)

<<https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assessment-framework>>.

⁴⁶ A number of these points are adapted from: Daniel Montoya and Alice Rummery, 'The use of artificial intelligence by government: parliamentary and legal issues' (E-brief No. 02/2020, NSW Parliament) 11.

⁴⁷ Commonwealth Ombudsman, *Automated decision-making: Better practice guide* (2019) 10

<https://www.ombudsman.gov.au/data/assets/pdf_file/0029/288236/OMB1188-Automated-Decision-Making-Report_Final-A1898885.pdf>.

⁴⁸ See e.g. Reuben Binns, 'Human Judgment in algorithmic loops: Individual justice and automated decision-making' *Regulation & Governance* (2022) 16, 197 – 211.

⁴⁹ See discussion in Paul Miller, 'A new machinery of Government?' in Zofia Bednarz and Monika Zalnierute (eds) *Money, Power & AI: Automated Banks, Automated States* (Cambridge University Press, 2023) 125.

⁵⁰ Commonwealth Ombudsman, *Automated decision-making: Better practice guide* (2019) 10

<https://www.ombudsman.gov.au/data/assets/pdf_file/0029/288236/OMB1188-Automated-Decision-Making-Report_Final-A1898885.pdf>; Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 56.

⁵¹ See Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report 7 of 2018* (14 August 2018) 12; Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report 11 of 2018* (16 October 2018) 78; Senate Standing Committee for the Scrutiny of Bills, *Delegated legislation monitor*, No 4 of 2024, 5.

⁵² Louisa Well, Morgan Currie & James Stewart, 'Surveillance, Discretion and Governance in Automated Welfare: the case of the German ALLEGRO system' *Science & Technology Studies* (2023) 36(1) 44.

⁵³ See e.g., *Social Security Act 1991* (Cth) s 24; *Beadle and Director-General of Social Security* (1984) 1 AAR 362;

Services Australia, 'Special Benefit' (Web Page) <<https://www.servicesaustralia.gov.au/special-benefit>>; Department of Social Services, 'Social Security Payments – Residence Criteria' (Web Page) <<https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria>>.

⁵⁴ Jonathan Barrett, "It doesn't make sense": why recipients of ATO 'robotax' letters are scratching their heads' *The Guardian* (30 November 2023) <<https://www.theguardian.com/australia-news/2023/nov/30/ato-on-hold-tax-debt-letters-robodebt-apology>>; Jonathan Barrett, 'ATO apologises for 'unnecessary distress' caused by on-hold tax debt recovery letters' (29 November 2023) <<https://www.theguardian.com/australia-news/2023/nov/29/ato-apologises-for-unnecessary-distress-caused-by-on-hold-tax-debt-recovery-letters>>.

⁵⁵ *Migration Regulations 1994* (Cth) provide that a SHEV holder who lodges a valid application for a subsequent SHEV before their original SHEV expires will remain lawful.

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- ⁵⁶ Denham Sadler 'Refugees cut off from support' *The Saturday Paper*, 24 September 2022 <<https://www.thesaturdaypaper.com.au/news/politics/2022/09/24/refugees-cut-support#hrd>>.
- ⁵⁷ Commonwealth Ombudsman, *Making things right: Insights into Services Australia's handling of the impact of a system error on certain historic child support assessments* (August 2023) 2 <https://www.ombudsman.gov.au/data/assets/pdf_file/0007/300310/Making-things-right-Public-statement-regarding-Child-Support-historic-assessments.pdf>.
- ⁵⁸ Philip Alston, 'Report of the Special Rapporteur on extreme poverty and human rights', UN Doc A/74/493 (1 October 2019) [50].
- ⁵⁹ Human Technology Institute, Submission to the Legal and Constitutional Affairs Committee, *Inquiry into the Privacy and Other Legislation Amendment Bill 2024*, October 2024 <<https://www.uts.edu.au/human-technology-institute/submissions>>.
- ⁶⁰ There is precedent for this. The *Digital ID Act 2024* (Cth) Chapter 3 adopts a higher standard of privacy considerations, beyond what is currently required under the Privacy Act.
- ⁶¹ Royal Commission into the Robodebt Scheme, Final Report (July 2023) 457.
- ⁶² Royal Commission into the Robodebt Scheme, Final Report (July 2023) 458.
- ⁶³ Office of the Australian Information Commissioner, *Australian Privacy Principles Guidelines: APP 6 Use or disclosure of personal information* (Web Page, July 2019) <<https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-6-app-6-use-or-disclosure-of-personal-information>>.
- ⁶⁴ See, e.g., Sophie Scott, Ariel Bogle and Laura Gartly 'My Health Record deadline looms, with privacy experts and Government at odds' ABC News (Online) 30 January 2019 .< <https://www.abc.net.au/news/2019-01-30/my-health-record-deadline-looms-jan-31/10759956>>.
- ⁶⁵ Graeme Greenleaf and Katharine Kemp, 'Police access to COVID check-in data is an affront to our privacy. We need stronger and more consistent rules in place' *The Conversation*, 7 September 2021 <<https://theconversation.com/police-access-to-covid-check-in-data-is-an-affront-to-our-privacy-weneed-stronger-and-more-consistent-rules-in-place-1673>>.
- ⁶⁶ *Digital ID Act 2024* (Cth) s 74.
- ⁶⁷ Paul Henman, 'Digital Social Policy: Past, Present, Future' *Journal of Social Policy* (2022) 3, 535-550, 538. See also Simone Casey, 'Towards digital dole parole: A review of digital self-service initiatives in Australian employment services' *Australian Journal of Social Issues* (2021) 57(1), 114.
- ⁶⁸ Essential Research and Human Technology Institute, *Invisible Bystanders: How Australian workers experience the uptake of AI and automation* (May 2024) <https://www.uts.edu.au/sites/default/files/2024-05/EssentialResearch%2BUTS_Invisible_Bystanders_0524_D4.pdf>.
- ⁶⁹ Human Technology Institute, Submission to the Department of Industry, Science and Resources, *Discussion Paper on Safe and Responsible AI in Australia*, August 2023, Recommendation 4 <<https://www.uts.edu.au/human-technology-institute/news/hti-submission-disr-discussion-paper>>.
- ⁷⁰ See e.g., Department of Employment and Workplace Relations, Supplementary submission to the Select Committee on Workforce Australia, *Inquiry into Workforce Australia and Employment Services* (May 2023) 56.
- ⁷¹ Department of Finance, *National framework for the assurance of AI in government* (June 2024) 21 <<https://www.finance.gov.au/government/public-data/data-and-digital-ministers-meeting/national-framework-assurance-artificial-intelligence-government>>.
- ⁷² 'Algorithmic Transparency Recording Hub', *UK Government* (Web Page) 17 December 2024 <<https://www.gov.uk/government/collections/algorithmic-transparency-recording-standard-hub>>; Jon Ungoed-Thomas and Yusra Abdulahi, 'Warnings AI tools used by government on UK public are 'racist and biased'' *The Guardian* (25 August 2024) <<https://www.theguardian.com/technology/article/2024/aug/25/register-aims-to-quash-fears-over-racist-and-biased-ai-tools-used-on-uk-public>>.
- ⁷³ See Economic Justice Australia, Submission to the Royal Commission into the Robodebt Scheme (February 2023) 18-19 <<https://www.ejaustralia.org.au/wp-content/uploads/Economic-Justice-Australia-submission- Robodebt-Royal-Commission .pdf>>.
- ⁷⁴ Royal Commission into the Robodebt Scheme, Final Report (July 2023) 657; Australian Government, *Government response: Royal Commission into the Robodebt Scheme* (November 2023) 8 <<https://www.pmc.gov.au/sites/default/files/resource/download/gov-response-royal-commission-robodebt-scheme.pdf>>.
- ⁷⁵ See generally, Janina Boughey, 'Outsourcing Automation: Locking the "Black Box" inside a Safe', and Darren O'Donovan, 'Evaluating Automation: The Need for Greater Transparency' in Janina Boughey and Katie Miller (Eds) *The Automated State* (Federation Press, 2021); See e.g. *O'Brien v Secretary, Department Communities and Justice* [2022] NSWCATAD 100.
- ⁷⁶ Australian Human Rights Commission, *Human Rights and Technology* (Final Report, March 2021) 62-67.
- ⁷⁷ Jake Goldenfein, 'Algorithmic Transparency and Decision-Making Accountability: Thoughts for Buying Machine Learning Algorithms' *Closer to the Machine: Technical, Social, and Legal aspects of AI* (Office of the Victorian Information Commissioner, 2019) 59.
- ⁷⁸ Terry Carney, 'Artificial Intelligence in Welfare: Striking the vulnerability balance?' *Monash University Law Review* (2020) 46(2) 41.
- ⁷⁹ 'Unravelling Robodebt: Legal Failures, Impact on Vulnerable Communities and Future Reforms' *University of Sydney* (Web Page) 13 December 2023 < <https://www.sydney.edu.au/law/news-and-events/news/2023/12/13/unraveling-robodebt-legal-failures-impacts.html>>.
- ⁸⁰ See, e.g., Paul Henman 'Administrative justice in a digital world: Challenges and solutions' in Marc Hertogh, Richard Kirkham, Robert Thomas and Joe Tomlinson (eds) *Oxford Handbook of Administrative Justice* (Oxford Academic, 2021) 469; Maria O'Sullivan, 'Automated decision-making and human rights: the right to an effective remedy' in Janina Boughey and Katie Miller (Eds) *The Automated State* (Federation Press, 2021) 70-89 of *The Automated State*.
- ⁸¹ *Administrative Review Tribunal Act 2024* (Cth) Div 4, subdivision C.