

BEING **AI**WARE: INCORPORATING CIVIL SOCIETY INTO NATIONAL STRATEGIES ON ARTIFICIAL INTELLIGENCE

AUSTRALIA

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INTRODUCTION

Australia is in the process of creating its first government-wide “AI Action Plan,” which will serve as the country’s action-oriented national AI strategy (NAIS)¹. Australia’s Department of Industry, Science, Energy and Resources (DISER) is leading the development of the national AI Action Plan and is expected to finalize the plan in mid-2021.

In November 2019, DISER issued the [AI Ethics Framework and Principles](#), a set of voluntary principles “encourag[ing] organizations using AI systems to strive for the best outcomes for Australia and Australians,” and guidelines for the application of the ethics principles. DISER intends to build on the AI Ethics Framework and Principles when crafting the AI Action Plan. Other reports developed with government support that will inform the creation of the AI Action Plan include Standards Australia’s [AI Standards Roadmap](#), CSIRO’s Data61’s [AI Roadmap](#), CSIRO’s Data61’s [discussion paper](#) on an AI ethics framework, and the Innovation and Science Australia (ISA)’s [Prosperity Through Innovation](#) recommendations². The extent to which the AI Ethics Framework and Principles and these reports will inform the AI Action Plan will become more clear when DISER finalizes the AI Action Plan.

1 We have included Australia in our analyses of countries with positive participatory processes in the creation of NAIS based on Global Partners Digital and the Stanford Cyber Policy Center’s report reviewing NAIS and human rights. The report cites several excerpts from Australia’s AI-related documents as positive examples of considering human rights in AI policy. The report specifies that it analyzed Australia’s AI ethics documents (i.e., the AI Ethics Framework and Principles and CSIRO’s Data 61’s AI Roadmap) as well as a 2018 report on Australia’s Tech Future, issued by the Australian Government. See Global Partners Digital and Stanford Cyber Policy Center, National Artificial Intelligence Strategies and Human Rights: A Review (April 2020), available at <https://www.gp-digital.org/wp-content/uploads/2020/04/National-Artificial-Intelligence-Strategies-and-Human-Rights%E2%80%94Review.pdf>.

2 Standards Australia is an independent, non-governmental, not-for profit organization specializing in the development, adoption, and assessment of technical standards in Australia and at an international level. The Commonwealth Scientific and Industrial Research Organizations (CSIRO) is Australia’s national science research agency established as an Australian Government corporate entity under the Science and Industry Research Act 1949. Data61 is CSIRO’s data and digital specialist data sciences arm that brings together a network of partners in government, industry, and academia to engage in digital research. ISA is an independent and expert board supported by the Office of Industry Innovation and Science Australia at DISER which advises the Australian Government on innovation, research, and science matters.

THE PROCESS TOWARDS AN ACTION PLAN

As noted above, DISER is leading the development of the National AI Action Plan. It appears that a small team focused on Emerging Technologies under DISER is steering the creation of the Action Plan in collaboration with representatives across the Australian government, as well as with input from the Australian Human Rights Commission.

DISER designed a consultation process to inform the creation of the AI Action Plan. In October 2020, DISER published a [discussion paper](#) online soliciting input on its forthcoming AI Action Plan. The consultation was open to the public on DISER's [consultation hub](#) for a one-month period. While the November deadline for submissions has now passed, latecomers appear to be able to submit their concerns to DISER's general [AI e-mail address](#), listed on the consultation hub page.

The discussion paper defines the concept and explains common uses of AI; recognizes the impacts of increased AI-usage while also acknowledging the opportunities that AI technologies provide; lays out steps already taken by the Australian Government to invest in AI research, adoption, and regulation; explains the imperative for taking action on AI; and lays out its vision for the creation of an Action Plan that “maximize(s) the benefits of AI for all Australians.”

The discussion paper categorizes key considerations under the Action Plan into four cones: “business,” “research,” “people,” and “society.” The “society” cone is of greatest relevance to our discussion about the impacts of AI on fundamental rights and civil society; it aims for the development and adoption of “human-centered AI technologies that are trustworthy and steward [Australian] values globally.” The paper provides detailed descriptions of concerns under each cone and solicits the public's input on (1) the role of the government to support the uptake and use of AI technologies in Australia, (2) ideas to reduce barriers to AI adoption in Australia, and more generally (3) whether DISER has outlined the “right vision for AI in Australia.”

DISER typically publishes summaries of consultation submissions on their consultation hub, including a breakdown of submissions by sector. As of February 2021, the department has not yet published a summary of the AI Action Plan consultation submissions.

DISER also held a [consultation](#) in 2019 to develop the AI Ethics Framework and Principles. According to DISER's summary of the consultation submissions, this consultation received more than 130 written submissions and consulted 272 stakeholder organizations

and individuals including 15 community organizations, 15 “peak bodies” (i.e., non-governmental organizations comprised of smaller organizations of allied interests), and 39 academics.

CONTINUED COLLABORATION WITH OTHER STAKEHOLDERS

In addition to seeking input from civil society, industry, and other government stakeholders on the AI Action Plan through the formal consultation process, DISER has notably also solicited input from the Australian Human Rights Commission (AHRC)³. The AHRC has in recent years engaged in an independent project on Human Rights and Technology, which has so far included a [multi-step consultation process](#) from 2018 to 2021. The process will culminate with the publication of a report in early 2021 that focuses on the need to ensure ‘accountable AI for informed decision-making,’ according to an AHRC official. The AHRC’s input to the government on AI policies is advisory, and not binding.

WHAT IS THE PERCEPTION ON INCLUSION AND PARTICIPATORY PROCESSES?

DISER appears to be making an earnest effort to ensure that the creation of Australia’s AI Action Plan is inclusive and accessible. The publicly accessible discussion paper laying out key issues, including an open-ended solicitation of input on whether DISER has identified the “right” issues from the perspective of the stakeholder, helps to ensure transparency and provide space for participation in the AI Action Plan-creation process. Furthermore, DISER’s efforts to reach out to CSOs and human rights groups, industry stakeholders, academia, and other partners, as well as its solicitation and consideration of AHRC inputs seem to indicate explicit interest in human rights considerations and stakeholders’ experiences in this regard. However, a DISER official that we interviewed acknowledged that due to the focus on economic growth and job creation, most of the department’s non-governmental partners are outside of the civil society and human rights sector. The breakdown of its 2019 consultation on the AI Ethics Framework, in which 15 civil society organizations and 15 non-governmental coalitions (“peak bodies”)

³ The AHRC is an independent statutory organization established by Australia’s Federal Parliament, which investigates and conciliates discrimination and human rights complaints, advocates for human rights to be considered in law and policymaking, researches and promotes awareness on human rights issues in Australia, and provides legal advice on human rights obligations to courts, among other duties. The AHRC is one of 117 National Human Rights Institutions (NHRIs) that have been accredited by the [Global Alliance of NHRIs](#) (GANHRI) and complies with internationally recognized standards – the Paris Principles – to ensure its independence, pluralism, and accountability.

submitted input out of 272 total submissions, confirms this gap in civil society input, highlighting a place for improvement in DISER's participatory processes.

DISER's discussion paper for the AI Action Plan also addresses many of the thirteen issues that Global Partners Digital and the Stanford Cyber Policy Center recommend as core components for a comprehensive NAIS, including ensuring that the development and use of AI is ethical ("ethics") and ensuring that the benefits of AI are inclusively and equitably felt ("inclusion")⁴. However, the component ensuring continued civil society input and engagement ("governance and stakeholder engagement") is notably missing—the discussion paper does not explicitly propose formal structures for continued input through the implementation and assessment phases of the AI Action Plan, though its open-ended guiding questions may invite input from stakeholders on the need for a formal engagement mechanism. We will reassess the text of Australia's AI Action Plan when DISER formalizes it later this year.

Finally, an AHRC official that we interviewed praised the DISER AI Action Plan team's continued conversations with the AHRC, describing the DISER team's receptiveness to input on the human rights perspective of AI. However, the AHRC official suspected that DISER may be limited in its capacity to ensure a full inclusion of human rights concerns in the AI Action Plan given the department's mandate and focus on economic growth and job creation. The AHRC official also echoed the problem of ensuring broad and diverse participation from civil society in AI-policymaking, noting that during the AHRC's own consultations under the Human Rights and Technology Project, there were fewer contributions from CSOs that do not focus on tech issues than those that have a tech-oriented mandate, such as defending privacy rights or promoting algorithmic transparency, as the non-tech-focused organizations may lack the knowledge or capacity to engage in the issues. One method that helped the AHRC to engage civil society members that were not already working on tech issues was to cold-call organizations and individuals that had contributed to other AHRC initiatives to encourage their participation in the consultation.

HOW AND BY WHOM ARE HUMAN RIGHTS CONCERNS ADDRESSED?

DISER's discussion paper notes under its "society" cone that AI systems must "respect human rights and diversity." Its AI

⁴ See National Artificial Intelligence Strategies and Human Rights: A review, *supra* note 1, at pages 34-35.

Ethics Principles also explicitly note that “AI systems should respect human rights.” The explicit recognition of the need to consider human rights in a national AI strategy such as the AI Action Plan is rare⁵ and including similar language in the finalized AI Action Plan would demonstrate Australia’s commitment to uphold its international obligations to protect human rights in its policies and practices.

Because Australia does not have a human rights law or contain a bill of rights in its federal Constitution, the AHRC has faced some barriers when pushing for inclusion of human rights language in legislation. However, a slew of recent tech-related scandals seems to have heightened the government’s awareness of the need to consider human rights when engaging in tech policy and strengthened the AHRC’s stature on tech and human rights issues. For example, in the [Centrelink debt notice scandal](#), Services Australia, a government department which oversees the Centrelink program issuing payments such as welfare, adopted an automated system to identify welfare fraud that issued false or incorrectly calculated debt notices that disparately burdened vulnerable groups due to issues with the data and assumptions used in the automated system to identify fraud. The AHRC has also pushed for recognition of its perspectives on AI by departments beyond DISER.

CONCLUSIONS AND RECOMMENDATIONS

The Australian government has planned an inclusive approach toward drafting an AI Action Plan. DISER’s inclusion of the AHRC in discussions about the plan is particularly innovative and commendable. As the government has not yet published the plan, it remains to be seen if its participatory approach will yield a policy that explicitly address human rights concerns. However, the recognition of the need to protect human rights in the AI Ethics Framework and principles, as well as in the discussion paper forming the basis for the AI Action Plan, are promising on this front.

Moving forward, we recommend that the government take steps to ensure diverse civil society participation in its consultative processes. As noted above, organizations that do not typically work on tech issues may shy away from consultations on AI due to lack of technical expertise; yet these groups have an important perspective on the impact of technology on fundamental rights and other societal concerns. Collaborating with the AHRC, such as through

⁵ See Id. at page 17 (“...relatively few NASs deeply engage with the human rights impacts of AI.”)

following up with its recommended participants for a consultative process, is one way to promote a diversity of submissions. Another tactic could be to review the breakdown of submissions by sectors represented, and to directly reach out to less-represented sectors after the first round of participation, to solicit further input.

Additionally, we recommend that the government build on its participatory process by including civil society in the implementation and review processes of the AI Action Plan. Continued engagement with and inclusion of civil society during all stages of the AI Action Plan⁶ helps to truly ensure that AI is developed for “all Australians.”

⁶ This is noted above as the “governance and stakeholder engagement” component recommended by GPD and the Stanford Cyber Policy Center in their report assessing national AI strategies.



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