



Human Rights and Technology Discussion Paper

Submission by the Australian Communications Consumer Action
Network to the Australian Human Rights Commission

23 March 2020

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Contents

1. Executive Summary.....	5
1.1. List of recommendations	5
2. Responses to the Human Rights and Technology Discussion Paper.....	8
2.1. Part A: Introduction and Framework	8
2.1.1. Proposal 1	9
2.1.2. Proposal 2	10
2.2. Part B: Artificial Intelligence.....	11
2.2.1. Question A.....	11
2.2.2. Proposal 3	12
2.2.3. Proposal 4	12
2.2.4. Proposal 5	12
2.2.5. Proposal 6	12
2.2.6. Proposal 7	13
2.2.7. Proposal 8 and Question B.....	13
2.2.8. Proposal 9	14
2.2.9. Proposal 10	14
2.2.10. Question C.....	14
2.2.11. Question D	14
2.2.12. Proposal 11	14
2.2.13. Proposals 12 and 13.....	15
2.2.14. Proposal 14 and Question E.....	15
2.2.15. Proposal 15 and Question F	16
2.2.16. Proposal 16	16
2.2.17. Proposals 17 and 18.....	16
2.3. Part C: National Leadership on AI	17
2.3.1. Proposal 19	17
2.4. Part D: Accessible Technology	18
2.4.1. Proposals 20 and 21	18
2.4.2. Proposal 22	19
2.4.3. Proposal 23	19
2.4.4. Proposal 24 and Question G	20
2.4.5. Proposal 25	20
2.4.6. Proposal 26 and Question H	21

2.4.7. Proposals 27 and 28.....	21
2.4.8. Proposal 29 and Question I.....	22
3. Conclusion.....	23

1. Executive Summary

ACCAN thanks the Australian Human Rights Commission (AHRC) for the opportunity to provide a response to this Discussion Paper. As Australia's peak consumer organisation in the communications sector, ACCAN is keenly interested in this project and ensuring that the human rights of consumers are protected in relation to new and emerging technologies. In our following response we reiterate our position that full and equal access to technology is a human right, and that access to technology enables the protection and promotion of many other human rights.¹

ACCAN supports an innovative technology sector which provides a range of solutions to meet consumer needs. However, ACCAN is concerned that enduring challenges and barriers, such as inaccessibility, privacy violations, data breaches and unaffordability, continue to disproportionately affect some groups more than others. For instance, people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds can experience the unintended outcomes of new technologies in unique and discriminatory ways. As such, appropriate regulations and supports must be put in place to protect against any threats that new technologies currently or may in the future pose to a full and equal enjoyment of human rights for all.

It is vital that a consideration of human rights remains front of mind in all discussions around technology, in Australia and indeed worldwide. We agree with the AHRC that legislation, standards, regulation and policies are all required to protect and promote human rights in relation to new and emerging technologies. Embedding a human rights approach into the development, use and monitoring of new and emerging technologies would not only promote transparency and accountability of governments and industry alike, but would also ensure that technology does not inherently discriminate (intentionally or unintentionally) against certain cohorts of society. In order to implement human rights by design, direct consultation must be undertaken with those who may be particularly affected by new and emerging technologies, including but not limited to people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds.

1.1. List of recommendations

Given that ACCAN generally agrees with many of the proposals made by the AHRC in the Discussion Paper, we only offer recommendations to clarify elements of these proposals. As such, we provide the following proposal-specific and general recommendations regarding the implementation of these ideas.

General recommendations

Recommendation 1: ACCAN recommends that human rights be embedded into the development and use of all new and emerging technology, in addition to the development of government and industry policies, monitoring and regulation.

Recommendation 2: ACCAN recommends that all AHRC proposals be progressed in close consultation with a broad group of stakeholders, including people who use and may be

¹ As outlined in our previous submission, and as articulated in the Discussion Paper

disproportionately impacted by new and emerging technologies. This must include people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds.

Recommendation 3: ACCAN recommends that all information about AI, AI-informed decision making and new and emerging technology be made available in a range of accessible formats, such as Easy English, Auslan, braille or large print. The exact types of accessible formats must be decided upon in close consultation with people with disability.

Specific recommendations

Recommendation 4: ACCAN recommends the development of a federal Human Rights Act to ensure broad and inclusive legislated protection of human rights, including in the development and use of new technologies. This must be accompanied by a blend of enforceable co-regulatory mechanisms that provide practical, up-to-date guidance regarding the development, use and monitoring of new and emerging technologies.

Recommendation 5: In order to ensure greater human rights protections for consumers, ACCAN recommends that all standards regarding new and emerging technologies be made mandatory and enforceable.

Recommendation 6: ACCAN recommends that the definition of ‘AI-informed decision’ be expanded to include decisions that have ‘legal or significant social, economic, political or civil effect for an individual’. The onus must be on the entity deploying AI-informed decision making to prove that an individual had not been discriminated against.

Recommendation 7: As ACCAN recommended in our submission to the Issues Paper, the Disability Discrimination Act (DDA) should be reformed and resourced to allocate sufficient power to the AHRC to perform more effective compliance monitoring, and to ensure that systemic discrimination against people with disability is adequately investigated and remedied.

Recommendation 8: In relation to the introduction of a statutory cause of action for serious invasions of privacy, ACCAN recommends that the ‘serious invasion’ threshold be clearly defined in legislation, and that consumers be appropriately compensated for any serious invasions of their privacy.

Recommendation 9: In relation to proposal 6, ACCAN recommends that governments and private entities alike be required to go through the same processes when deploying AI-informed decision making systems.

Recommendation 10: ACCAN recommends that measures be taken to ensure that AI-informed decisions for which no reasonable explanations are provided are not considered to be lawfully made.

Recommendation 11: ACCAN recommends that there must be clear and mandated requirements for human intervention in AI-informed decision making systems.

Recommendation 12: ACCAN recommends that robust human rights protection be built into the legal framework around the use of facial recognition technologies. ACCAN further recommends that governments and the telecommunications industry increase education efforts for consumers in relation to telecommunication use of biometric data.

Recommendation 13: ACCAN recommends that a human rights impact assessment tool be made mandatory. Such a tool must be deployed at the earliest possible stage to ensure robust human rights protection. If this tool reveals a high risk of human rights impact in relation to an AI-informed decision making system, ACCAN recommends that this should result in the system not being deployed.

Recommendation 14: ACCAN recommends that in addition to ensuring adequate human rights protections in the procurement of AI-informed decision making systems, procurement rules must also clearly identify other requirements such as those provided under AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services).

Recommendation 15: ACCAN recommends that the AI Safety Commissioner play a role in monitoring the development of AI, especially AI-informed decision making systems. In order to maintain its independence, ACCAN further recommends that the AI Safety Commissioner be solely funded by the Australian Government.

Recommendation 16: ACCAN reiterates our previous recommendation that the Australian Government introduce reform similar to that offered by the US's 21st Century Communications and Video Accessibility Act, to require access features for video content to follow video across all forms of distribution in Australia.

Recommendation 17: ACCAN recommends that the funding of mainstream and assistive technologies be streamlined across the NDIS and My Aged Care systems to ensure more consistently equitable access for all people with disability. ACCAN further recommends that subsidies be made available to those continuing to experience affordability barriers in relation to purchasing accessible technologies.

Recommendation 18: ACCAN recommends that people with disability be involved in the development and delivery of any course content regarding human rights by design principles or accessibility. Such training must be mandatory for certain cohorts involved in the development, use, monitoring, or procurement of new and emerging technologies, including AI-informed decision making systems.

Recommendation 19: ACCAN recommends that separate legally-binding standards be developed regarding a) the accessibility of communications technologies; b) the accessibility of Internet of Things enabled devices; and c) the accessibility of information about new and emerging communications and IoT technologies.

2. Responses to the Human Rights and Technology Discussion Paper

2.1. Part A: Introduction and Framework

New digital technologies can exacerbate inequalities and lead to discrimination.² Inequality breeds further inequality, and serves to limit the human rights of those experiencing inequality.³ However, new and accessible digital technologies can also advance human rights, and lead to the greater enjoyment of freedoms and improved services.⁴ As ACCAN has submitted elsewhere,⁵ there is an urgent need to balance safeguards and human rights protections with the economic and business opportunities that are facilitated by new digital technologies such as artificial intelligence (AI) and AI-informed decision making.

Much like the AHRC, ACCAN believes that an international human rights lens is required when discussing new and emerging digital technologies and the protections that are necessary to ensure consumers are safeguarded against these technologies.⁶ A human rights approach is vital to prevent new and emerging technologies from further entrenching existing inequalities, or creating new inequalities and forms of discrimination.⁷

Recommendation 1: ACCAN recommends that human rights be embedded into the development and use of all new and emerging technology, in addition to the development of government and industry policies, monitoring and regulation.

Recommendation 2: ACCAN recommends that all AHRC proposals be progressed in close consultation with a broad group of stakeholders, including people who use and may be disproportionately impacted by new and emerging technologies. This must include people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds.

Recommendation 3: ACCAN recommends that all information about AI, AI-informed decision making and new and emerging technology be made available in a range of accessible formats, such as Easy English, Auslan, braille or large print. The exact types of accessible formats must be decided upon in close consultation with people with disability.

² As discussed in both the AHRC's Issues and Discussion Papers. See also: United Nations Committee on the Rights of Persons with Disabilities, *General Comment No.2 (2014) on Accessibility*, UN Doc CRPD/C/GC/2 (22 May 2014).

³ As per p24 of the Discussion Paper

⁴ As outlined on p153 of the Discussion Paper. See also: UN General Assembly, *Convention on the Rights of Persons with Disabilities: Resolution/Adopted by the General Assembly, 24 January 2007, A/RES/61/106*; United Nations Committee on the Rights of Persons with Disabilities, *General Comment No.2 (2014) on Accessibility*, UN Doc CRPD/C/GC/2 (22 May 2014).

⁵ ACCAN, 2019. *Submission to the Department of Industry, Innovation and Science Public Consultation, Artificial Intelligence: Australia's Ethics Framework*. Available: <http://accan.org.au/our-work/submissions/1634-ai-ethics-framework>

⁶ As per p31 of the Discussion Paper

⁷ As per p24 of the Discussion Paper

2.1.1. Proposal 1

ACCAN supports the development of a National Strategy on New and Emerging Technologies as outlined in proposal 1.

ACCAN agrees that the National Strategy should set aims that promote responsible innovation and protect human rights; however these national aims must be developed in consultation with a broad group of stakeholders. Members of civil society, including people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds, must be meaningfully involved in these conversations. This collaboration would ensure that the priorities and aims of the National Strategy reflect the issues impacting those who are using and being impacted by new and emerging technologies. Such issues would likely include, for instance, accessibility, privacy and affordability, among many others.

Industry representatives must also be meaningfully involved in the development of the National Strategy's aims. Such consultation may lead to greater industry buy-in regarding human rights protection and responsible innovation. Meaningful engagement between civil society and industry towards this common goal may also help build, or rebuild, the trust of consumers regarding new and emerging technologies.⁸

ACCAN also supports the suggestion that the National Strategy could promote effective regulation. Although ACCAN has in the past stated that new protections specifically designed to cover AI technology is not called for,⁹ it is clear that existing safeguards in Australia, including legislation and regulatory frameworks, have not always worked to protect human rights. Indeed, the Discussion Paper outlines many of these instances, such as the 'Robo-Debt' computer algorithm that incorrectly identified many people as having outstanding Centrelink debt.¹⁰ ACCAN would therefore like to see clearly defined human rights obligations for both government and non-government entities regarding the development and use of new technologies.

Recommendation 4: ACCAN recommends the development of a federal Human Rights Act to ensure broad and inclusive legislated protection of human rights, including in the development and use of new technologies. This must be accompanied by a blend of enforceable co-regulatory mechanisms that provide practical, up-to-date guidance regarding the development, use and monitoring of new and emerging technologies.

As such, ACCAN's position is that broad and all-encompassing legislated human rights protection, such as a federal Human Rights Act, is vital. Such legislation must incorporate all of the international human rights instruments to which Australia is party. Human rights-based legislation would allow for sufficient flexibility and applicability, all while offering substantial human rights protections. This legislation must not only embed human rights based protections and supports for consumers; but must also give legal status to co-regulatory measures aimed at protecting human rights to make these measures enforceable.¹¹

⁸ As outlined in various places throughout the Discussion Paper, this is urgently needed

⁹ ACCAN, 2019 op cit. p5.

¹⁰ As per p38 and p66 of the Discussion Paper

¹¹ As outlined as an option on p34 of the Discussion Paper

In relation to new and emerging technology, ACCAN recognises that each technology and setting will likely require a unique approach to regulation. Co-regulation would provide the practical guidance necessary to fill the gaps of existing or new, human rights-based legislation. We feel that co-regulation, by its very nature of being quicker to develop and revise than legislation, and by allowing the involvement of subject matter experts,¹² permits any unique and technology-specific approaches to be updated as frequently as necessary.

While acknowledging that innovation and fast-moving technological changes make legislation and co-regulation more challenging,¹³ we do not feel that self-regulation through non-legally binding voluntary codes or standards offers appropriate nor sufficient human rights protection. Voluntary self-regulation, such as industry trust marks based on self-reporting or incentive-based initiatives should not be implemented in isolation. Any standards regarding new and emerging technology must be given legislative force by federal, state and territory parliaments.

Recommendation 5: In order to ensure greater human rights protections for consumers, ACCAN recommends that all standards regarding new and emerging technologies be made mandatory and enforceable.

Finally, ACCAN concurs that the National Strategy should resource capacity building activities, such as education, training and guidance for government, industry and civil society. Capacity building must be independent and transparent to ensure that all actors involved in new and emerging technologies have access to the same type and scope of information. This could help to address the information asymmetry that can affect the relationships between individuals and industry or government.

2.1.2. Proposal 2

ACCAN supports an independent inquiry into ethical frameworks for new and emerging technologies, as outlined in proposal 2.

ACCAN supports the development of a human rights based ethical framework that aims to promote and protect human rights in relation to new and emerging technologies. In addition, we support any work to improve the efficacy of ethical frameworks to ensure that they operate in a meaningful and appropriate manner. We would also support any efforts to fill existing gaps in protection for consumers, through legislative reform, the development of new co-regulatory measures or through this framework itself.

Mirroring the comments of the AHRC,¹⁴ we caution against overreliance on ethical frameworks that lack consensus and enforceability. In ACCAN's view, a human rights based ethical framework would provide consolidated, high level guidance to governments and industries on minimising and preventing individual and collective harms that may be caused by new and emerging technologies. This framework would promote and protect the human rights of all consumers and would complement legislation, as well as compliance and enforcement procedures. The framework would also guide innovation, particularly if it were supported on a national or global level.

¹² As per p37 of the Discussion Paper

¹³ As outlined on p35 of the Discussion Paper

¹⁴ As per p47 of the Discussion Paper

2.2. Part B: Artificial Intelligence

In addition to issues around accessibility raised in our submission to the AHRC's Issues Paper, ACCAN has concerns regarding privacy and safety in relation to AI and AI-informed decision making. We are concerned about new and emerging technologies that limit the right to privacy, and that contribute to vast amounts of personal data leaving the hands of consumers. These concerns are especially pressing given the digitisation of essential government services.¹⁵ ACCAN recognises the need to overcome current fragmented approaches to AI (and accessibility, as discussed later), and supports efforts towards more consistent and enforceable human rights protections for consumers. As such, we concur with the three principles suggested by the AHRC to guide how the Australian Government and industry engage in AI-informed decision making.¹⁶

The use of AI and AI-informed decision making has the potential to impact on a range of human rights.¹⁷ While we acknowledge the potential of AI to benefit society and individuals, our focus in this section is on the risks and negative impacts associated with AI, and particularly how these can disproportionately affect certain groups or people with shared characteristics.¹⁸ As outlined above, we believe that appropriate and mutually supportive legislation and co-regulation, alongside a human rights based ethical framework, is required to protect human rights.

ACCAN agrees with the AHRC that AI-informed decision making must be lawful, transparent, explainable, and used responsibly, and must be subject to appropriate human oversight and intervention.¹⁹ In addition, we support the AHRC's statement that 'for accountability to be effective, there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress'.²⁰

2.2.1. Question A

In regards to question A, ACCAN is concerned that what constitutes a 'similarly significant' effect on someone may not be entirely clear. This could be clarified to outline that an AI-informed decision is one that has 'legal or significant social, economic, political or civil effect for an individual.' This could be extrapolated to include reference to decisions that illegitimately limit an individual's human rights. ACCAN proposes that this could help address the fact that what one person experiences as a 'significant' effect may be vastly different to what another person experiences as a 'significant' effect.

Recommendation 6: ACCAN recommends that the definition of 'AI-informed decision' be expanded to include decisions that have 'legal or significant social, economic, political or civil effect for an

¹⁵ As outlined on p65 and p88 of the Discussion Paper

¹⁶ As outlined on p59 of the Discussion Paper: that international human rights law be observed in the deployment of AI-informed decision making; that mechanisms be put in place to minimise harm and protect human rights; and that AI-informed decision making be held accountable.

¹⁷ As outlined on p65 of the Discussion Paper

¹⁸ As outlined on p24 and p65 of the Discussion Paper

¹⁹ As outlined on p75 of the Discussion Paper

²⁰ As per p76 of the Discussion Paper

individual'. ACCAN further recommends that the onus must be on the entity deploying AI-informed decision making to prove that an individual had not been discriminated against.

2.2.2. Proposal 3

ACCAN supports proposal 3 and agrees that the Australian Law Reform Commission should conduct an inquiry into the accountability of AI-informed decision making. We agree that such an inquiry should consider reforms needed to promote human rights. As ACCAN recommended in our submission to the Issues Paper, the Disability Discrimination Act (DDA) should be reformed to provide greater monitoring and investigatory powers to the AHRC. Law reform must ensure that the DDA completely complies with the obligations outlined in the CRPD.

Recommendation 7: As ACCAN recommended in our submission to the Issues Paper, the Disability Discrimination Act (DDA) should be reformed and resourced to allocate sufficient power to the AHRC to perform more effective compliance monitoring, and to ensure that systemic discrimination against people with disability is adequately investigated and remedied.

2.2.3. Proposal 4

ACCAN agrees that the Australian Government should introduce a statutory cause of action for serious invasion of privacy, as outlined in proposal 4, and as discussed in a number of previous inquiries. Consumers must also be provided with adequate remedies for serious invasions of their privacy. ACCAN recommends that the 'serious invasion' threshold be clearly articulated in legislation. This would provide guidance to consumers regarding what experiences constitute 'serious invasions' of their privacy, and would help empower consumers to pursue remedies.

Recommendation 8: In relation to the introduction of a statutory cause of action for serious invasions of privacy, ACCAN recommends that the 'serious invasion' threshold be clearly defined in legislation, and that consumers be appropriately compensated for any serious invasions of their privacy.

Furthermore, ACCAN supports the AHRC's suggestion that government deployment of AI-informed decision making 'should be expressly provided for in law.'²¹

2.2.4. Proposal 5

We agree with proposal 5 that legislation be introduced requiring individuals to be informed where AI is used in decisions that impact their rights. Such legislation should require individuals to be informed about both government and private use of AI-informed decision making. This legislation should also outline that such information must be made available in a range of accessible formats, such as Easy English, Auslan, braille or large print.

2.2.5. Proposal 6

ACCAN supports proposal 6, which outlines that the Australian Government must go through certain processes before deploying an AI-informed decision making system. ACCAN argues that the same

²¹ As per p91 of the Discussion Paper

requirements must be met by private entities using AI-informed decision making, especially when using AI-informed decision making systems in the delivery of government-funded contracts.

Recommendation 9: In relation to proposal 6, ACCAN recommends that governments and private entities alike be required to go through the same processes when deploying AI-informed decision making systems.

ACCAN agrees that there must be a cost-benefit analysis for the use of AI, and that this must clearly reference human rights and what protections will be put in place. We support the suggestion that the government engage in public consultation prior to deploying AI-informed decision making, and reiterate our previous comments that this consultation must meaningfully include people for whom AI-informed decisions may have a disproportionate impact. For instance, public consultation prior to government deployment of AI-informed decision making systems must include people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds.

Finally, in relation to proposal 6 we strongly agree that the government must only proceed with the AI-informed decision making system if it is expressly provided for by law and there is proof that human rights will be appropriately and sufficiently protected. We suggest that the AI Safety Commissioner (discussed further below) could have an oversight role in this regard.

2.2.6. Proposal 7

ACCAN agrees with proposal 7 regarding the introduction of legislation about the explainability of AI-informed decision making. This would help to ensure greater trust in AI-informed decision making systems and the entities deploying them, and would also help to address current information asymmetries that can exist between industry and consumers. As outlined above, explanations and information about the use of AI in decision making must be made available in a range of accessible formats, such as Easy English, Auslan, braille or large print.

We agree with the AHRC that AI-informed decision making systems that do not allow decisions to be challenged must not be used.²²

2.2.7. Proposal 8 and Question B

ACCAN agrees unequivocally with proposal 8, which states that: ‘where an AI-informed decision-making system does not produce reasonable explanations for its decisions, that system should not be deployed in any context where decisions could infringe the human rights of individuals.’²³

In relation to question B, we answer in the affirmative. ACCAN believes that Australian law should impose a rebuttable presumption that in circumstances where reasonable explanations are not offered for AI-informed decisions, these decisions were not lawfully made.

Recommendation 10: ACCAN recommends that measures be taken to ensure that AI-informed decisions for which no reasonable explanations are provided are not considered to be lawfully made.

²² As per p97 of the Discussion Paper

²³ Proposal 8, as per p98 of the Discussion Paper

2.2.8. Proposal 9

ACCAN agrees with proposal 9 that centres of expertise should look into designing AI-informed decision making systems that provide reasonable explanations to consumers. This body of work should accompany other topics, such as the accessibility of AI and the use of AI-informed decision making systems in relation to vulnerable consumers.

2.2.9. Proposal 10

We agree with proposal 10 that the Australian Government should introduce legislation stipulating that the legal person who deploys an AI-informed decision making system is legally liable for the use of the system. This legislation should provide guidance and clarify any ambiguity around liability, and should hopefully make governments and industry alike more cautious when deploying AI-informed decision making systems.

2.2.10. Question C

ACCAN supports efforts to make AI-informed decision making systems more transparent and accountable. If it is determined that legislative reform is required to achieve greater transparency and to hold those designing and deploying AI-informed decision making systems to account, then ACCAN supports these efforts.

2.2.11. Question D

Human intervention in relation to AI-informed decision making is essential. As we have submitted elsewhere,²⁴ it is vital that the voices of consumers and their needs are included in all facets of AI, particularly where there is limited human interaction in AI-informed decision making systems. Legislation must mandate the requirements for human intervention. Such legislation would support a more precautionary approach to the use of AI-informed decision making, which could help to prevent human rights violations or other adverse effects to those impacted by AI-informed decision making.

Recommendation 11: ACCAN recommends that there must be clear and mandated requirements for human intervention in AI-informed decision making systems.

2.2.12. Proposal 11

ACCAN agrees that until a legal framework is in place, a legal moratorium should be introduced on the use of facial recognition technology in decision making that might impact on the human rights of consumers. There must be robust human rights protections built into the legal framework around the use of facial recognition technologies. The development of this framework must involve consultation with members of civil society, such as privacy advocates, academics, and people with disability and their representative bodies, as well as interested members of the general public.

²⁴ ACCAN, 2019, op cit., p6.

In addition, ACCAN continues to call for governments and members of the telecommunications industry to increase education efforts to ensure consumers are aware of the use of facial recognition technology and other types of biometric data.²⁵

Recommendation 12: ACCAN recommends that robust human rights protection be built into the legal framework around the use of facial recognition technologies. ACCAN further recommends that governments and the telecommunications industry increase education efforts for consumers in relation to telecommunication use of biometric data.

2.2.13. Proposals 12 and 13

ACCAN agrees with proposal 12 that all standards in Australia relating to AI-informed decision making should incorporate guidance on human rights compliance. Ideally, human rights compliance would be legally enforceable, through an overarching federal law (as discussed briefly above) or through a legally enforceable human rights by design scheme. As is outlined in the Discussion Paper, ‘design standards supported by legislation would be a more robust model for human rights protection.’²⁶

A taskforce into human rights by design in relation to AI-informed decision making, as outlined in proposal 13, must draw on international efforts and work in this space. The taskforce must consult broadly, including with people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds.

2.2.14. Proposal 14 and Question E

ACCAN supports proposal 14 regarding the development of a human rights impact assessment tool and associated guidance to be used in relation to AI-informed decision making systems. It is vital that members of civil society are involved in the development of this tool. Ideally, the development of this tool would involve international expertise and guidance, to ensure that the tool retains relevance and applicability if used to assess systems developed overseas.

In response to the questions posed under question E, ACCAN believes that this tool should be deployed at the earliest possible stage. Based on our experience on issues relating to accessibility, it is often the case that retrofitting changes to improve functionality is more costly than building these same changes in from the beginning. As such, the tool must be deployed as early as possible in the development of AI-informed decision making systems. In order to ensure robust human rights protection, the use of this tool to complete a human rights impact assessment must be mandatory for both government and private use of AI-informed decision making systems.

If the use of this tool indicates that an AI-informed decision making system has a high risk of human rights impact, ACCAN’s position is that the AI-informed decision making system must not be deployed. Any risk to human rights should prevent the use of AI-informed decision making for the purpose for which it has been assessed under the tool.

²⁵ ACCAN, 2018. *Biometrics and the Changing Face of Consumer Smartphone Security*, available: <http://accan.org.au/our-work/1532-biometrics-midas-touch-report>

²⁶ As per p111 of the Discussion Paper

Finally, international involvement in the development of this tool could help to ensure that an appropriate human rights impact assessment could be performed on AI-informed decision making systems that are developed in other countries.

Recommendation 13: ACCAN recommends that a human rights impact assessment tool be made mandatory. Such a tool must be deployed at the earliest possible stage to ensure robust human rights protection. If this tool reveals a high risk of human rights impact in relation to an AI-informed decision making system, ACCAN recommends that this should result in the system not being deployed.

2.2.15. Proposal 15 and Question F

ACCAN does not have sufficient expertise regarding regulatory sandboxes to comment on proposal 15 or question F. However, we agree that sufficient testing of AI-informed decision making systems is required to ensure that they appropriately protect human rights.

2.2.16. Proposal 16

We agree with proposal 16 that the National Strategy on New and Emerging Technologies (proposed by the AHRC in proposal 1) should include education on AI and human rights. We agree that such education and training should be tailored to different groups within the community. More information and education could help to reduce the current information asymmetry that exists between consumers, industry and governments. As such, there are clear benefits of greater education and training for general consumers, in addition to more specific training to be provided to AI developers, decision makers and professionals. These latter groups must be trained in assessing the likely impact of AI-informed decisions on vulnerable cohorts of society.²⁷

2.2.17. Proposals 17 and 18

ACCAN agrees with all aspects of proposal 17, and urges that this comprehensive review into the use of AI-informed decision making by the Australian Government be undertaken as soon as possible. In order to ensure this review happens within a reasonable timeframe, but still in a thorough manner, ACCAN suggests that an existing independent body could oversee the review.

ACCAN fully supports proposal 18, which states that ‘the Australian Government rules on procurement should require that, where government procures an AI-informed decision-making system, this system should include adequate human rights protections.’²⁸ The procurement rules must clearly identify other existing requirements, such as those provided under AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services). As outlined in our submission to the Issues Paper, the Australian Government could use its substantial purchasing power to improve the availability and affordability of accessible technologies in Australia.²⁹

²⁷ As outlined on p121 of the Discussion Paper

²⁸ Proposal 18, as per p129 of the Discussion Paper

²⁹ ACCAN’s submission to the Issues Paper, p8

Recommendation 14: ACCAN recommends that in addition to ensuring adequate human rights protections in the procurement of AI-informed decision making systems, procurement rules must also clearly identify other requirements such as those provided under AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services).

2.3. Part C: National Leadership on AI

2.3.1. Proposal 19

ACCAN supports proposal 19 regarding the establishment of an AI Safety Commissioner to take a national leadership role in the development and application of AI in Australia. ACCAN agrees that the AI Safety Commissioner should work alongside existing regulators, as well as industry and government, and should bolster existing consumer safeguards, protections and regulatory regimes. ACCAN agrees that the AI Safety Commissioner must not be the sole regulator for AI.

We also support the involvement of the AI Safety Commissioner in educational activities, as an independent trainer and source of guidance for industry, and as a source of independent advice for consumers where appropriate. The provision of any capacity building activities must be clearly demarcated in the AI Safety Commissioner's mandate, to ensure that its advice, education and training is independent and appropriate. The AI Safety Commissioner must be completely independent in its structure, operations and mandate, and must be transparent in all of its activities.

ACCAN agrees that the AI Safety Commissioner should monitor the use of AI. In addition, ACCAN believes it must play a role in monitoring the development of AI, in particular AI-informed decision making. The AI Safety Commissioner's mandate must also include the ability to investigate the development and use of AI, and to work alongside existing regulators where necessary in undertaking these investigations.

We also agree that the AI Safety Commissioner could highlight the work of Australia's technology sector and AI innovation on a global stage, and be an international source of policy expertise. It is vital, however, that the AI Safety Commissioner maintains the highest levels of transparency and independence when performing these duties domestically and internationally.

ACCAN agrees that the AI Safety Commissioner must be adequately resourced. To prevent any conscious or unconscious bias, our preference is that the AI Safety Commissioner be entirely funded by the Australian Government.

Finally, ACCAN agrees that the AI Safety Commissioner should shape its own work and priorities. It is vital, however, that inclusive community consultation and research inform these priorities. The AI Safety Commissioner must be representative, and must work alongside civil society and industry to protect the rights of people for whom AI can pose disproportionate risk.³⁰ This must include meaningful and regular consultation with people with disability, Aboriginal and Torres Strait Islanders, people from culturally and linguistically diverse backgrounds, older people, people on low incomes and other groups that experience particular risk in relation to the development and implementation of AI.

³⁰ As suggested by the eSafety Commissioner (as per p137 of the Discussion Paper)

Recommendation 15: ACCAN recommends that the AI Safety Commissioner play a role in monitoring the development of AI, especially AI-informed decision making systems. In order to maintain its independence, ACCAN further recommends that the AI Safety Commissioner be solely funded by the Australian Government.

2.4. Part D: Accessible Technology

We thank the AHRC for its considerable focus on the accessibility of new and emerging technologies. Our previous submission focused keenly on accessibility as an enabling right, and as a precondition for the enjoyment of other human rights.³¹ We appreciate the AHRC's distinction between 'obtaining technology' and 'using technology' as two separate, yet interrelated, types of access. While acknowledging the issues that many people face in obtaining technology, our below response focuses more on functional access, and how people use new and emerging technologies.

ACCAN has recently undertaken some community consultation regarding the issues that people with disability are currently experiencing in relation to communications technologies, as well as issues that they anticipate may arise in the future. Many of these issues relate to ACCAN's broader policy work, as well as our disability-specific policy activity. Indeed, many of the issues raised in our consultation, by both individual and organisational contributors, relate directly to the proposals outlined in part D of the Discussion Paper. We would welcome the opportunity to discuss these issues with the AHRC in more detail if necessary.

2.4.1. Proposals 20 and 21

In our previous submission ACCAN recommended that the Australian Government immediately implement AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services) in all federal procurement of ICT. We therefore thoroughly support proposal 20 which details that all levels of governments should commit to digital technologies that comply with recognised accessibility standards, including through an accessible procurement policy and the development of policies that increase the availability of accessible communication services.

The overwhelming majority of standards and guidelines around accessible technology are voluntary, and neither legally binding nor enforceable.³² ACCAN recommends that standards regarding accessibility – where they exist – should be incorporated into legislation by federal, state and territory parliaments. This must include Australian Standard EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services) and WCAG 2.1.

Similarly, we support proposal 21 in relation to industry compliance with accessibility standards. Our perspective is that an inquiry into industry compliance with accessibility standards such as WCAG 2.1 and AS EN 301 549 will help to illustrate the range of accessibility issues experienced by people with disability in Australia. Such an inquiry must be followed up with clear and enforceable action to ensure improvements to accessibility.

³¹ As also discussed by the United Nations Committee on the Rights of Persons with Disabilities, *General Comment No.2 (2014) on Accessibility*, UN Doc CRPD/C/GC/2 (22 May 2014).

³² As outlined on p152 of the Discussion Paper

2.4.2. Proposal 22

ACCAN is pleased that the AHRC supports calls for broadcasting and online content to be made more accessible for people with disability.³³

Since the release of the Discussion Paper, the Australian Government has provided funding for both the ABC and SBS to implement audio description on broadcast television. However, ACCAN believes that proposal 22 remains necessary, as there has been no legislation introduced to ensure the longevity of this service. The community remains unsure of exactly how the service will be introduced, what levels of audio description will be provided, and whether this service will continue after the next financial year. We are pleased to note that the AHRC's proposal encompasses national, commercial and subscription broadcasting services, and we are keen to ensure that greater accessibility is made available across each of these different services. We are equally supportive of the proposal that the minimum of 14 hours of audio description per week for each channel be subject to annual increases, as we recommended in our response to the Issues Paper.

Similarly, regarding captioning on broadcast television ACCAN supports increases to the minimum hours of captioned content provided per week. We are keen to ensure that this requirement also applies across national, commercial and subscription broadcasting services, and across all channels (including multi-channels). We strongly believe that broadcasters should be providing captioning for the full 24 hour viewing day. Furthermore, efforts must be made to ensure that access features follow video content across different platforms. This would support the AHRC's call for online content, as well as broadcast content, to be made more accessible.

Recommendation 16: ACCAN reiterates our previous recommendation that the Australian Government introduce reform similar to that offered by the US's 21st Century Communications and Video Accessibility Act,³⁴ to require access features for video content to follow video across all forms of distribution in Australia.

Finally in regards to proposal 22, we agree with the AHRC's suggestion that consultation with people with disability and their representative bodies occur throughout the reform process. People with disability must be kept informed about changes that will affect them, and must have the opportunity to have their say regarding these changes.

2.4.3. Proposal 23

ACCAN thanks the AHRC for considering our submission to the Issues Paper so thoroughly, and for including our recommendations regarding access to information in the Discussion Paper.³⁵ We agree that there is a need for greater provision of accessible information, instructional and training material for consumer goods. We therefore support proposal 23 for the creation of an Australian Standard or Technical Specification regarding such information, however our position is that such standards must be mandatory, and must be enforced. Such information must be made available in a range of accessible online and hard copy formats, including for instance Easy English, Auslan, braille, and large print.

³³ As per p162 of the Discussion Paper

³⁴ Available: <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

³⁵ As per p159 of the Discussion Paper

2.4.4. Proposal 24 and Question G

ACCAN thanks the AHRC for its discussion of our ‘No Australian Left Offline’ campaign.³⁶ We agree that a concessional wholesale broadband product should be developed to support those on low incomes, including people with disability, to access the internet. ACCAN’s No Australian Left Offline campaign is now supported by 36 organisations.

While we agree that reducing the cost of internet for those on low income may help boost digital inclusion, we must recognise that there are a range of other affordability issues at play. Some cohorts of society will experience these issues to a greater extent, such as people with disability and those requiring accessible or assistive technologies. As we explained in our previous submission, the cost of technology can be a prohibitive barrier and can exacerbate existing inequalities.³⁷

ACCAN feels that with sufficient human rights focused legislation, enforceable standards, and mandatory procurement rules around accessibility, some of the barriers to affordable and accessible digital technologies may be removed. The combined effect of these measures will not only improve access to accessible technologies, but will likely bring about greater and more equal economic, social and community opportunities for people with disability.³⁸ It would also lead to greater consumer choice, and would enable people with disability to shop around not only for the accessibility features that best suit their needs, but also for the best deal.

In addition to these measures, subsidies and funding must also be provided to those who require additional financial support. As we noted in our previous submission, there is some inconsistency in the NDIS’s approach to providing mainstream technology such as smartphones as part of NDIS packages.³⁹ All funding inconsistencies – in the NDIS and My Aged Care landscapes alike – must be addressed to ensure equitable access to assistive and mainstream technologies for all people with disability (regardless of their age). This would help to address some of the existing affordability issues in relation to obtaining access to accessible devices. Additional affordability measures could also include the expansion of the Disability Equipment Programs run by telecommunications providers to have these include a wider variety of accessible devices.

Recommendation 17: ACCAN recommends that the funding of mainstream and assistive technologies be streamlined across the NDIS and My Aged Care systems to ensure more consistently equitable access for all people with disability. ACCAN further recommends that subsidies be made available to those continuing to experience affordability barriers in relation to purchasing accessible technologies.

2.4.5. Proposal 25

ACCAN fully supports proposal 25 and the proposed actions for the Council of Australian Governments Disability Reform Council to take regarding human rights by design, and including a focus on access to digital and other technologies as a priority in the next National Disability Strategy. Government-wide accessibility and human rights by design based approaches, across all types of

³⁶ Available: <https://accan.org.au/No-Australian-Left-Offline>

³⁷ ACCAN’s submission to the Issues Paper, pp7-8

³⁸ ACCAN’s submission to the Issues Paper, pp7-8

³⁹ ACCAN’s submission to the Issues Paper, p8. This issue was also raised by a number of stakeholders in response to ACCAN’s recent community consultation project.

digital technologies and new and emerging technologies, is essential. Government action on this issue would likely be a model for the private sector. However, ACCAN notes that evaluations of the current National Disability Strategy have been routinely delayed. We urge the Disability Reform Council to ensure that appropriate and timely monitoring is in place for the next National Disability Strategy.

As outlined elsewhere in this submission, we recommend that an intersectional and representative consultation be performed as part of the development of these policies and processes, and that people with disability, older people, Aboriginal and Torres Strait Islanders, people on low incomes and people from culturally and linguistically diverse backgrounds have sufficient opportunities to feed into this process.

2.4.6. Proposal 26 and Question H

ACCAN agrees that human rights by design principles should be included in tertiary and vocational education courses relevant to science, technology and engineering. A course on human rights by design principles must be mandatory, and must include information about the right of people with disability to access technology. People with disability must be involved in the development and delivery of this course content.

In addition to science, technology and engineering courses, ACCAN feels that any staff involved in procurement, particularly public procurement, should receive training on human rights by design principles. Similarly, this information would also be useful to those studying marketing and/or policy.

Recommendation 18: ACCAN recommends that people with disability be involved in the development and delivery of any course content regarding human rights by design principles or accessibility. Such training must be mandatory for certain cohorts involved in the development, use, monitoring, or procurement of new and emerging technologies, including AI-informed decision making systems.

2.4.7. Proposals 27 and 28

We agree with proposal 27 that professional accreditation bodies for engineering, science and technology should introduce mandatory training on human rights by design principles as part of ongoing professional development. We again recommend that people with disability be involved in the development and delivery of professional development course materials.

In response to proposal 28, we agree that an organisation could coordinate and oversee the development and delivery of this national education, training, accreditation and capacity building. This organisation should oversee the delivery of training to a wide range of stakeholders, including those involved in the development, use or marketing of digital technologies (as discussed above), the general public, people with disability and older people. People with disability, older people and others requiring accessible and/or assistive technologies should also be supported through free training to understand how they can use accessible technology. ACCAN suggests that Disabled Peoples Organisations that are also registered training organisations could run these courses, or an accreditation scheme associated with the successful completion of human rights by design professional development.

2.4.8. Proposal 29 and Question I

ACCAN reiterates our call for stronger legal protection regarding discrimination against people with disability, specifically in relation to access to digital technologies. We agree with the AHRC's assessment that 'current Australian law does not fully reflect national obligations to protect the rights of people with disability',⁴⁰ and urge the Australian Government to do more. As outlined in our previous submission and above, the DDA requires urgent reform to ensure it is fit for purpose and does not put disproportionate burden on the individual experiencing discrimination.

We agree that a legally-binding standard, or set of standards, could better protect the right of people with disability to access digital technologies. In addition, a standard may also make accessible devices more widely available, as well as more affordable. While we understand why the AHRC has limited this to digital technologies that are primarily used for communications, we recommend that Internet of Things enabled devices be included as a separate legally-binding standard. Some of these devices provide essential supports to people with disability, and in many instances support greater independence and involvement in the community.

ACCAN therefore supports proposal 29 that a Digital Communication Technology Standard be developed under section 31 of the DDA. We agree that the Attorney-General must consult widely in the development of this standard, particularly with people with disability and experts in both technology and accessibility.

Recommendation 19: ACCAN recommends that separate legally-binding standards be developed regarding a) the accessibility of communications technologies; b) the accessibility of Internet of Things enabled devices; and c) the accessibility of information about new and emerging communications and IoT technologies.

When developing these standards, considerable thought must be given to the monitoring or enforcement mechanisms that will ensure that the standards achieve their aims. The standards must also be accompanied by a public education campaign to inform people about their rights, as well as educating the technology industry to help them understand their obligations and support them to comply with these responsibilities.

⁴⁰ As per p182 of the Discussion Paper

3. Conclusion

ACCAN would like to thank the AHRC once more for the opportunity to contribute to this project. We look forward to subsequent consultations and are keen to see the implementation of the AHRC's proposals.

As outlined in our submission, ACCAN is of the staunch belief that the protection and promotion of human rights must always be the priority when considering the development, use and monitoring of new and emerging digital technologies. We are confident that implementing the proposals made by the AHRC in close collaboration with industry, civil society and government, would help to protect and promote all human rights as people interact with a range of new and emerging digital technologies.