



alannah & madeline
foundation



Automated decision-making and AI regulation

A submission by the
Alannah & Madeline Foundation

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Executive summary

At the Alannah & Madeline Foundation (the Foundation), we support children and young people to build digital intelligence and digital ethics and become active, positive digital citizens. We uphold the rights of children online and offline.

As such, we welcome the opportunity to help inform the work of the Digital Technology Taskforce as it pursues the Government's vision for Australia to be a 'top 10 digital economy and society' by 2030. This consultation is of particular interest, focusing on how Australia's regulatory settings and systems could 'maximise opportunities to enable and better facilitate the responsible use of AI and automated decision making'.¹

The consultation issues paper defines artificial intelligence (AI) as 'a collection of interrelated technologies that can be used to solve problems autonomously and perform tasks to achieve defined objectives. In some cases, it can do this without explicit guidance from a human being.' Automated decision making (ADM) is defined as 'the deployment of technology to automate a decision-making process – in whole or part'.²

The Foundation has not undertaken detailed work in that space and given the short time period allocated for this consultation (approx. one month), our comments will be high-level. However, we trust they will help the Taskforce to formulate answers to these guiding questions from the issues paper:

7. *Is there a need for new regulation or guidance to minimise existing and emerging risks of adopting AI and ADM?*
8. *Would increased automation of decision making have adverse implications for vulnerable groups? How could any adverse implications be ameliorated?*
10. *Are there international policy measures, legal frameworks or proposals on AI or ADM that should be considered for adoption in Australia? Is consistency or interoperability with foreign approaches desirable?*³

Depending on how they are designed and deployed, AI and ADM technologies have the power to shape the lives of young Australians in beneficial or harmful ways. To deliver the best results for young Australians and prevent and minimise the risks, it is vital to recognise children and young people as key stakeholders whose lives are impacted by AI and ADM in many ways (positive and negative) in commercial, public, and not-for-profit digital environments.

To this end, we believe this consultation process should be broadened and appropriately resourced to engage meaningfully with regulators, peak bodies, and researchers with expertise in children's rights and children's positive development. At present, the consultation appears to lean heavily towards the business community, with little attention paid to what AI and ADM mean for individual Australians, including children.

Stronger and clearer coordination is also needed between this consultation process and the many frameworks, guiding documents, reviews, and proposals for reform in relation to the digital sector which emerged in Australia over the past couple of years. This is a 'busy' space at present, involving many areas of government. To be effective, any changes to legislation, policy and/or resource allocation should have regard to, and align workably with, the other existing directions for reform.

This consultation process could also deliver better results for children and young people if it engaged with the extensive work that has been done internationally to address the ramifications of AI for children's rights.

Finally, we recognise that reforms to legislation and policy can only achieve so much; effective regulation is also essential. If AI and ADM deliver immense benefits to the economy, as the issues paper states, it seems reasonable (as well as necessary) to adequately resource regulatory frameworks, bodies, and processes to protect children from the harms these technologies can cause and to foster positive uses of the technologies to help deliver the best results for children.

About us

The Foundation was established the year after the Port Arthur tragedy, by Walter Mikac AM in memory of his two young daughters, Alannah and Madeline. Our vision is that all children and young people are safe, inspired and have freedom to flourish.

Over the last 25 years our work has grown and evolved but our purpose remains the same. We have three program streams:

- **Safe and Strong: recovering and healing from trauma.** Linked to our origin story, we have a specialist trauma recovery and therapy service for children who have experienced significant trauma. This has grown in recent years to include working with early childcare providers, kindergartens, and now primary schools to help them build their trauma informed capability and practices. Most of our work in trauma healing and recovery is Victorian based, with our therapists and consultants working from our client's homes and places of work.
- **Safe and Strong: building positive digital citizens.** The Foundation works with schools, families and communities nationally to help children build the digital intelligence, skills and competencies they need to stay safe online and to be active, positive digital citizens. With over 10 years' experience working in the cyber bullying and wellbeing space, as technology has become ubiquitous, our work has developed into building digital intelligence, digital ethics and media literacy for all children aged 3-18.
- **Safe and Strong: bringing children's rights to life.** As a rights-based organisation, this is our policy and advocacy work. Since inception, we have advocated for firearms safety, and we convene the Australian Gun Safety Alliance. In other key policy matters related to our programs, we work closely with the Office of the eSafety Commissioner, the Prime Minister's National Office for Child Safety and other major agencies such as the Australian Federal Police.

In 2018, we partnered with Kate and Tick Everett, after the tragic suicide of their daughter, Dolly. With them we worked to establish Dolly's Dream.

- **Safe and Strong: Dolly's Dream, changing the culture of bullying.** The purpose is the same, but the programs and services (Parent Hub, telephone help line, school, and community workshops etc.) are specifically designed for remote, rural, and regional families and communities, to meet their unique needs and contexts.

Recommendations

1. Formally recognise children and young people as stakeholders in the future of AI and ADM technologies, whose best interests must be upheld and whose particular needs and vulnerabilities must be addressed.
2. Expand the consultation process to engage fully and meaningfully with regulators, peak bodies and researchers with expertise in children's rights and children's positive development. Additional time and resources may be needed to make this happen. We believe key stakeholders include:
 - the Australian Centre to Counter Child Exploitation (the ACCCE)
 - the Office of the eSafety Commissioner, whose work on Safety by Design is especially relevant here
 - the National Children's Commissioner within the Australian Human Rights Commission
 - UNICEF; and –
 - community sector peak bodies such as Australian Council of Social Service which can speak to the complexities of using AI and ADM technologies when working with vulnerable Australians.

3. Ensure that any changes to legislation, policy and/or resource allocation in relation to AI and ADM have regard to, and align workably with, other proposed and actual reforms to the digital sector. There have been many of these in Australia over the past couple of years, including:
 - a review of the Privacy Act 1988
 - the proposed introduction to Parliament of the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill
 - the report of the Select Committee on Social Media and Online Safety
 - the detailed recommendations about AI reforms made by the Australian Human Rights Commission through their project on human rights and technology.

It is also important to have clarity about how any reforms of AI and ADM align with Australia's Artificial Intelligence Ethics Framework and AI Action Plan and help to progress the aspirations of those documents.

4. Treat the best interests of the child as a key guiding principle for reform of the digital sector, including in relation to AI and ADM, in recognition of the many ways these technologies can either uphold or endanger the rights of children. Reforms should be compatible with the United Nations Convention on the Rights of the Child, especially General Comment No.25 (2021) on children's rights in relation to the digital environment.
5. Have regard to work done in international contexts to develop roadmaps, guiding principles and tools to help governments reform AI and ADM to better uphold the rights of the child. We see the work of UNICEF's Office of Global Insight and Policy on children and AI as particularly useful. Work would be needed to assess its utility to the Australian context and adapt it appropriately. The four-step process proposed by 5Rights Foundation to help identify, eliminate, mitigate, and manage risks to children created by algorithms is also of interest.
6. Commit to adequately resourcing regulatory frameworks, bodies, and processes to help prevent and address harm to children (and Australians of all ages) through AI and ADM technologies. Regulation must be effective, comprehensive, and fit for purpose.

Children's lives are affected significantly by AI and ADM

If AI and ADM pose both challenges and opportunities for the business community, as the issues paper explores, these technologies also pose challenges and opportunities for individual Australians, including children and young people. These must be properly understood and addressed.

Digital technologies are fully integrated into the lives of most Australian families, with 4 out of 5 school-aged children owning at least one personal screen-based device. The average Australian child owns more than three screen-based devices.⁴ By age 16-17, approx. 8 out of 10 young Australians use social media daily.⁵ AI and ADM are integrated into many of these technologies, sometimes without users realising it.

Children and young people already interact with AI in many ways: through smart toys, virtual assistants, gaming, chatbots, and social media. Algorithms help to decide which online content children will watch, read, and listen to, and whom they communicate with online. More broadly, AI systems are increasingly shaping children and young people's experiences of health care, education, work, finances, and transport.⁶

AI and ADM can be designed and deployed in ways which are highly beneficial to children and young people. Beneficial uses of these technologies include (amongst other things):

- connecting distressed young people online with reputable mental health services

- detecting and removing cyber bullying material from social media platforms
- counteracting the spread of disinformation and misinformation online
- detecting and removing online child sexual abuse material and identifying perpetrators.

However, without the right policies and systems in place to prevent it, AI and ADM can also be designed and deployed in ways which are risky or harmful to children and young people. These negative uses include (amongst other things):

- arbitrary or unlawful interference with children's privacy
- 'profiling' of children or decision-making based on biased, partial, or unfairly obtained data
- bombarding children with paid content with commercial or political motivations
- manipulation of children's behaviour, emotions, or development
- connection of children with strangers online
- 'nudging' of children to make in-app purchases or use gambling-style technologies
- recommendation of material to children which is age-inappropriate or harmful – eg. pornography, disordered eating, self-harm, or suicide material.⁷

It is vital that this consultation considers fully the significant ramifications of AI and ADM for children and young people.

Unfortunately, children and young people are all too often left out of these discussions and their resulting reforms. As UNICEF has noted in a global context, the AI strategies and ethical guidelines of most countries have historically ignored or neglected the needs and rights of children under 18. And through direct consultations with young people in several countries, UNICEF found that young people saw AI systems as designed and run for adults; young people tended to learn about AI from peers and family rather than teachers; and young people's levels of knowledge and critical thinking about AI were often limited.⁸

Reforms must draw on meaningful engagement with experts in child rights and related fields

As the consultation issues paper notes, there are some key existing frameworks and guiding documents which set the scene for Australian reforms in the space of AI and ADM. These include:

- Australia's Artificial Intelligence Ethics Framework (2019), whose eight voluntary principles are designed to help decision-makers ensure that AI is safe, secure, and reliable. The principles encompass human-centred values (including respect for human rights); human and societal wellbeing; fairness; privacy protection; safety; transparency and responsible disclosure; contestability; and accountability.
- Australia's *AI Action Plan 2021*, which includes as one of its four focus areas 'making Australia a leader in responsible and inclusive AI'.
- the OECD/G20 AI Principles (2019), which promote the use of AI that respects human rights and democratic values.⁹

All of these approaches connect clearly to the importance of upholding children's rights and acting in the best interests of the child. Therefore, we believe it would be in the spirit of the above-mentioned documents to ensure that any reforms resulting from this consultation are informed by meaningful engagement with experts in children's positive development and the rights of the child.

However, at present, the consultation process does not appear to be set up to facilitate such engagement adequately. The issues paper focuses largely on the potential of AI and ADM to improve productivity and facilitate economic growth and jobs creation. Meanwhile, the Digital Experts Advisory Committee assisting

the taskforce consists largely of experts from the business world, representing digital platforms and companies specialising in areas like ICT, cyber security, medical technologies, and agribusiness.¹⁰

In comparison, little attention has been paid to the perspectives and best interests of individual Australians whose lives are affected by digital technologies – including children and young people – who have specific needs and vulnerabilities. Nor is there much space allocated to the various public and not-for-profit sectors whose own use of AI and ADM affects children's lives in areas such as education, health, and human services. This raises concerns for us about whether the best interests of children will be adequately recognised and upheld within the work of this taskforce.

We would like to see any reforms to the AI/ADM space to be informed by meaningful engagement with regulators and other experts including:

- the Australian Centre to Counter Child Exploitation (ACCCE), who can speak to the critical roles played by automation, machine learning and artificial intelligence in combatting online child sexual abuse. These technologies can detect, match, classify, prioritise, and remove images and identify perpetrators at a scale, speed and depth of detail that would be impossible for human analysts alone. However, this is a complex and rapidly changing space with many risks of its own.¹¹
- The Office of the eSafety Commissioner, Australia's independent regulator for online safety. The work of eSafety in combatting image-based abuse, cyber bullying, and abhorrent violent content online would make their insights valuable to any successful reform of the AI/ADM space. Moreover, eSafety leads the important movement for 'Safety by Design', which facilitates digital platforms to anticipate, prevent, minimise and eliminate online harms at the design stage, rather than waiting for problems to occur. This has clear relevance to AI and ADM.
- experts in children's rights, such as the National Children's Commissioner and UNICEF Australia, as well as the Australian Human Rights Commission, whose report *Human Rights and Technology* made extensive and detailed observations about AI and how that space might be reformed to ensure better human rights protections.
- representative bodies for the community services sector, who can speak to the roles that AI and ADM play (or could play in the future) in service provision to vulnerable Australians, including in sensitive areas such as youth mental health care.

Given the relatively short timeframes currently allocated for this consultation and the fact that child-rights expertise is not represented on the advisory body at present, there may need to be a reasonable extension of time and resources to enable this engagement to be done meaningfully.

Reforms should be clearly aligned and coordinated across government

Australia is experiencing a busy and complex time in relation to the review and regulation of digital technologies. A review of the Privacy Act 1988 is underway, and various proposals for reform have been put forward. These include:

- a 2021 exposure draft of the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill proposed, amongst other things, that digital platforms be required to treat the best interests of the child as the primary consideration when deciding whether it is fair and reasonable to handle individuals' personal data.¹²
- the 2022 report of the Select Committee on Social Media and Online Safety which identified opportunities and risks associated with AI and automated systems. The report recommended, amongst other things, a further review of the use of algorithms by digital platforms, to be led by the Office of the eSafety Commissioner, the Department of Infrastructure, Transport, Regional Development and Communications and the Department of Home Affairs, and the creation of 'A

- roadmap for Australian Government entities to build skills, expertise and methods for the next generation of technological regulation in order to develop a blueprint for the regulation of Artificial Intelligence and algorithms in relation to user and online safety, including an assessment of current capacities and resources.¹³ (See Recommendation 13.)
- a three-year project on human rights and technology undertaken by the Australian Human Rights Commission. Their final report (2021) made 38 recommendations, 19 of which focused on AI, covering areas including legal accountability, regulation, communication with the public, research and expert guidance, legislation to safeguard human rights, and the application of Australia's AI Ethics Principles.¹⁴

It is important that any changes to legislation and policy in relation to AI and ADM have regard to, and align workably with, other reforms to the digital space, keeping in mind that various directions for AI reform have already been put forward. A coordinated approach across government is needed.

Useful models have been developed to uphold children's rights in relation to AI

At the Foundation, we have a strong focus on bringing to life the rights of children. To this end, we maintain that any reforms to the digital sector should be compatible with the UN Convention on the Rights of the Child, especially General Comment No.25 (2021) on children's rights in relation to the digital environment. We also welcome the respect for human rights articulated in Australia's Artificial Intelligence Ethics Framework and in the OECD/G20 AI Principles.¹⁵

More specifically, we note that frameworks, guidelines, and resources have already been developed internationally to provide direction to countries seeking to reform their AI/ADM systems to better uphold the rights of the child. We would like to see this consultation process engage with those existing pieces of work and consider how their learnings might be applied most usefully in the Australian context.

Of particular interest is a two-year project led by UNICEF's Office of Global Insight and Policy to better understand how AI systems can protect, provide for, and empower children.¹⁶

Through this work, UNICEF has produced policy guidance to governments (2021) about upholding children's rights when creating, reviewing, and/or updating AI policies, systems, strategies, and codes of conduct. They call upon governments to uphold children's rights through the lenses of protection (children should not be harmed through AI), provision (AI should bring positives for children) and participation (children should have agency and opportunity in relation to AI). They argue that child-centred AI depends on nine core approaches:

- support children's development and wellbeing
- ensure inclusion of and for children
- prioritise fairness and non-discrimination for children
- protect children's data and privacy
- ensure safety for children
- provide transparency, explainability, and accountability for children
- empower government and businesses with knowledge of AI and children's rights
- prepare children for present and future developments in AI
- create an enabling environment.¹⁷

This project has also produced a roadmap and tools to guide policymakers in relation to AI and children, including understanding the impacts of AI on children and developing, applying, monitoring, evaluating, and improving strategies that are relevant to different local contexts.¹⁸

Also noteworthy is the work of the not-for-profit 5Rights Foundation, who (informed by the UN Convention on the Rights of the Child, General Data Protection Regulation, and the UK's Age Appropriate Design Code) have offered a four-step process for use by digital platforms to identify, eliminate, mitigate and manage risks

to children created by algorithms. These steps involve: understanding the design goals; considering the data inputs, assessing the model selection and execution; and identifying outputs and outcomes.¹⁹

Reform processes in Australia could be greatly strengthened if they had regard to resources such as these and made use of them in ways appropriate to the Australian context.

Regulation of digital technologies must be adequately resourced

The consultation issues paper identifies various concerns hindering Australia from making the best possible uses of AI and ADM, including complexity of regulatory frameworks; international developments; public mistrust; potential bias or discrimination; concerns about transparency; the need for continued human discretion; and privacy issues.²⁰ We believe these issues cannot be addressed without adequate investment in regulatory oversights and processes that are effective, comprehensive and fit for purpose.

It is unworkable and unreasonable to hold individual Australians personally responsible for avoiding the misuse of their personal data, whether by AI systems or elsewhere. Most children and young people (and adults) have little understanding of how these technologies work and have limited opportunities to withhold their consent, as having one's data handled by commercial entities is increasingly made a precondition for accessing necessary or desirable services.

If AI and ADM are agreed to offer enormous benefits to the economy – the issues paper estimates these technologies could contribute more than \$20 trillion to the global economy by 2030²¹ – it seems reasonable to invest appropriately in regulation, auditing, and remediation to ensure the technologies deliver positive results for Australians whose lives are affected by them.

As 5Rights Foundation has stated:

'Children cannot be expected to understand or take action against automated decision-making or algorithmic unfairness, it is unlikely that they have the developmental capacity, the knowledge or the resources to understand the subtle, cumulative or even acute nudges and impacts those automated systems have on their online experience. In fact – many children do not understand that an algorithm could be responsible for introducing them to a "suggested friend" nor do they have the tools to prevent an onslaught of automated harmful material. Regulators must be given not only the powers to interrogate automated systems but create the expectation that they will be actively analysing automated decision-making systems and algorithms of services that impact on children – a duty to investigate.

...

In order to fulfil this duty, regulators must have the expertise, resource[s], and processes in place to scrutinise the design goals, data inputs, model selection and outputs and outcomes of algorithms.

...

Algorithmic oversight is critical if the next generation of digital technologies, products and services are to offer children safety and respect for their rights, by design.²²

We would welcome the opportunity to discuss any of these matters further. Please contact:

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