



10 March 2020

Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Email: tech@humanrights.gov.au

Dear sir/madam

Technology and Human Rights

As the primary union representing Australian Public Service (APS) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates.

The CPSU welcomes the opportunity to make a submission in response to this discussion paper on Human Rights and Technology. New technologies are having an escalating impact on how the Australian Public Service operates and is shaping how services are delivered to the community. The increased use of technology has the potential to improve service delivery and processing for people relying on public services. However, our members have seen how it can create more confusion and undermine public trust in our systems, and, in some instances, cause considerable distress and hardship for some of the most vulnerable people in our community. The problems with the Government's social security compliance system – the robodebt debacle – is a clear example of what can go wrong when technological advances applied to human services are not focussed on the needs and rights of the people using those services.

The CPSU is broadly supportive of many of the recommendations in the Human Rights Commission discussion paper as it echoes concerns the CPSU has previously raised. For example, our submission to the Select Committee into the Future of Work and Workers recommended ongoing, independent processes for examining the social impact of algorithms used by Government are established that involve frontline staff.¹

The CPSU supports proposals that require informing individuals of when artificial intelligence (AI) has been used, the requiring of a cost-benefit analysis for AI, the legislating of explainability and that AI is not employed where it could infringe on human rights. We also are supportive of the proposed inquiries into the accountability of AI-informed decision making, ethical frameworks for new and emerging technologies and comprehensive review of government use of AI. The CPSU expects that the application of any new technology is based on the premise that the Commonwealth has a duty of care to the public when duties are being performed and this extends to any advice or actions performed.²

¹ Community and Public Sector Union (2018, February). Future of Work and Workers. Retrieved from https://www.cpsu.org.au/system/files/cpsu_submission_to_inquiry_into_the_future_of_work_and_workers.pdf

² Australian Government (2020, February 10). Social Security Guide Version 1.261. Retrieved from <https://guides.dss.gov.au/guide-social-security-law/1/3/4/10>

The CPSU does, however, believe the discussion paper does not adequately address:

- the protection of staff whistleblowers;
- how to ensure that before deployment of AI, there is mandatory consultation with frontline public service staff who may be able to identify perverse impacts and help to ensure that the deployment of AI is human rights compliant; and
- the need for frontline staff to provide ongoing oversight once it has been deployed.

Along with the general public, we need to empower those who know what is going on in the workplace as an integral part of the development, evaluation and ongoing adaptation of changing technology to service delivery and government processes. Frontline staff need to be informed about the assumptions behind algorithms and involved in genuine, ongoing consultation while it is being used that allows for systems to be adjusted where staff feedback highlights problems. The CPSU's experience with the robodebt debacle was that frontline staff were not properly informed about the purpose of the program before it was rolled out and those who raised concerns during limited testing were ignored.

For our 2017 submission to the Senate inquiry into the Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative, the CPSU surveyed DHS members.³ Our survey found the Government ignored the opportunity to deal with the obvious flaws in this system ahead of its implementation.

Most staff were not given any opportunity for genuine consultation about the roll out of online compliance initiative (OCI), better known as robodebt. Less than one in ten (7.3 per cent) DHS staff surveyed by the CPSU felt the purpose of the OCI program was clearly and effectively communicated to staff and over four in five (85.7 per cent) did not believe the Department was prepared for the impact of the rollout on vulnerable clients.

Staff reported that they previously warned the Department that automated data matching would lead to incorrect debts being issued.⁴ Over two thirds (68.3 per cent) of staff surveyed had concerns before the OCI program commenced but shockingly nearly three in ten (28.7 per cent) did not know anything about it before it started.

Nearly nine in ten (87 per cent) of those surveyed who had concerns about the OCI program before it commenced raised them with management. It is troubling that over a third (36.8 per cent) of those who said they raised concerns were told the system had been tested and worked well and that a quarter (26.7 per cent) were told it was up to the customer to respond and not for staff to worry about. Their concerns were simply brushed off and ignored. Many members stated that concerns were raised during the design process but were simply ignored. A member who previously worked in Business Integrity stated:

"I was in Business Integrity when this was being discussed and every single staff member knew the automated processing wouldn't work effectively. We told management that you can't apportion income like that. When we worked in Business Integrity the debts we raised were incredibly complicated and we were scrutinised down to the last cent.

While big data can work with incomplete information, its use in automating fraud determinations without a role for trained staff in checking the debts means that inaccuracies can have significant and wide-reaching implications. An internal cost-

³ Community and Public Sector Union (2017, March). Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative. Retrieved from <https://www.cpsu.org.au/resources/cpsu-submission-design-scope-cost-benefit-analysis-contracts-awarded-and-implementation>

⁴ Tom McIlroy (2017, 10 January). 'They don't care about average Australians': Centrelink staffer speaks out about debt controversy. *Sydney Morning Herald*. Retrieved from www.smh.com.au/federal-politics/political-news/they-dont-care-about-average-australians-centrelink-staffer-speaks-out-about-debt-controversy-20170109-gto5i0.html

benefit analysis of the effectiveness of the Department's data-matching process with the Australian Taxation Office found that 15% of detected discrepancies were not actually debts owed by people.⁵ As pointed out by the Government's former chief digital adviser, the problems have affected people least capable of dealing with government mistakes.⁶

The experience of the robodebt debacle show there must be protections for conscientious objectors, employee organising, and ethical whistle-blowers. To minimise perverse outcomes for the community, frontline public service staff have to be involved in the development and deployment of AI to ensure accountability. Doing so will ensure that we benefit from AI whilst ensuring empathy for the variety of experiences of those who engage public services. These protections should also extend to the private sector.

All this will require properly resourced human oversight of all APS compliance programs so the community can be confident that any issues raised with citizens are legitimate and accurate. The impact of the Average Staffing Level cap and budget pressures has placed significant pressure on agencies and eroded their capacity. The CPSU notes that agencies such as the Office of the Australian Information Commissioner have faced extensive staffing pressures and may not be prioritised over other service delivery agencies. Resourcing needs to be a focus to ensure enforceability and the Average Staffing Level cap must be abolished.

Australian law explicitly allows computers to make important decisions previously made by the ministers or staff of at least 11 federal government departments and that there are at least 29 legislative clauses that explicitly enable government officials to let computers make decisions on their behalf.⁷ Consideration should also be given to adopting a legislative framework that mandates oversight by people employed under the Public Service Act when establishing the parameters used for setting up automated decision making, and that this becomes a process where AI process can make recommendations but the final decision still rests with an APS employee.

For further information, please contact [REDACTED], Senior Policy and Research Officer via email [REDACTED] or on [REDACTED].

Yours sincerely


[REDACTED]

[REDACTED]
ASSISTANT NATIONAL SECRETARY

⁵ Christopher Knaus (2017, 11 January). Government knew about discrepancies in data-matching system before reducing human oversight. *Guardian Australia*. Retrieved from <https://www.theguardian.com/australia-news/2017/jan/12/centrelink-human-oversight-slashed-after-cost-benefit-analysis>

⁶ Tony Yoo (2017, 6 January). Turnbull's former digital tsar says 'blind faith' in data led to the Centrelink debt debacle. *Business Insider Australia*. Retrieved from <http://www.businessinsider.com.au/turnbulls-former-digital-tsar-says-blind-faith-in-data-led-to-the-centrelink-debt-debacle-2017-1>

⁷ Simon Elvery (2017, 21 July). How algorithms make important government decisions — and how that affects you. ABC News. Retrieved from <https://www.abc.net.au/news/2017-07-21/algorithms-can-make-decisions-on-behalf-of-federal-ministers/8704858>