Diversity Council Australia Ltd

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By email: digitaltechnologytaskforceinbox@pmc.gov.au.

Positioning Australia as a Leader in Digital Economy Regulation: Automated Decision Making and AI Regulation

Dear Secretary, Digital Technology Taskforce,

Thank you for the opportunity to provide a submission in response to the public consultation on *Positioning Australia as a leader in digital economy regulation.*

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We have a wealth of experience providing advice to our members on the business benefits of diversity and inclusion.

Artificial Intelligence is an area of interest for DCA. Along with Monash University and Hudson RPO, we are currently undertaking a series of studies exploring the impact of unconscious bias on recruitment and selection decisions that use artificial intelligence. This research has a number of important implications for this review.

There is enormous potential for AI and ADM tools to improve the way that we live and work. But there is also the potential for negative or biased outcomes, unless we consider diversity and inclusion throughout the design, development and training of algorithms.

Regulating AI and ADM in Australia should seek to minimise these potential negative impacts and ensure that AI 'works for people'.[1] Further, many Australians believe that AI will lead to job losses, and that there should be protections in place for people whose jobs are lost to AI.[2]

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on 0424 578 698 or advocacy@dca.org.au, should you require any further information about this matter.

Yours sincerely

Lisa Annese
Chief Executive Officer

I. ABOUT DIVERSITY COUNCIL AUSTRALIA

Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

DCA's Membership covers over 20% of the Australian workforce

DCA's prestigious group of 1000 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

About our members

- 1000 member organisations, including almost 40 ASX100 Listed companies.
- Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.
- Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: https://www.dca.org.au/membership/current-dca-members.

Our belief, vision and mission

- Our **belief** is that diversity and inclusion is good for people and business.
- Our **vision** is to create a more diverse and inclusive Australia.
- Our **mission** is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.

Our Research

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

- **DCA research is grounded in the contributions of people with lived experience.** DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.
- **DCA resources are ahead of the curve**. They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.
- **DCA resources drive business improvement**. They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.
- **DCA resources are practice focused**. They respond to the information needs of industry leaders and the people they employ.
- **DCA resources speak to the Australian context**. DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.
- **DCA resources considers all diversity dimensions**. The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.

II. POSITIONING

The importance of taking an intersectional approach

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It is therefore critical when drafting and implementing parental leave policy that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.

Explanatory note on language

DCA is committed to inclusive language at work – that is, language that is respectful, accurate, and relevant in the workplace. At the same time, we know that what constitutes inclusive language is an evolving discussion and one characterised by multiple views.

DCA recognises that gender does not only exist in binary categories and that many people do not identify or fit comfortably with these labels. We acknowledge that there are people whose experiences and identities cannot be captured by this binary language.

At DCA we aim to use language that includes, and addresses marginalisation of, all genders where possible.

However, this submission sometimes uses binary language. This occurs because using binary language is sometimes necessary to convey the gendered nature and dynamics of society, and the very real effects these categories can have on people's lives.

III. SUMMARY

DCA welcomes the opportunity to make this submission.

As Australia's peak body leading diversity and inclusion in the workplace, DCA is interested in how inclusion and diversity intersect with, and will be impacted by, artificial intelligence (AI) and automated decision-making (ADM).

To date, this is not an issue that has been considered in much detail by many of the conversations around AI and ADM and we believe that it is critical for positioning Australia as a leader in digital economy regulation.

DCA, with Monash University and Hudson RPO, is undertaking a series of studies exploring the impact of unconscious bias on recruitment and selection decisions that use artificial intelligence. This research has a number of important implications for this review.

There is enormous potential for AI and ADM tools to improve the way that we live and work. But there is also the potential for negative or biased outcomes, unless we consider diversity and inclusion throughout the design, development and training of algorithms.

Proper regulation and guidance concerning the use of these tools can help minimise this risk. While the AI and ADM industry has the potential to create jobs, many Australians are also concerned about job losses.[3] We should ensure that there are protections in place for people whose jobs may be disrupted or lost to AI and ADM.

Australia should adopt an approach to regulation that ensures that AI and ADM 'works for people'.[4] Therefore, we make the following recommendations:

RECOMMENDATION 1: There is a need for guidance and education for people using AI tools, so they know what the tool does, how it works, and how it can be used in a way that eliminates bias.

RECOMMENDATION 2: Regulations should ensure that people are alerted when they are interacting with an AI, or when they are impacted by decisions made by AI or ADM.

RECOMMENDATION 3: There should be regulation on AI vendors that requires an adequate level of transparency and accountability.

RECOMMENDATION 4: AI and ADM vendors should be required to demonstrate how their products conform to AU ethics principles.

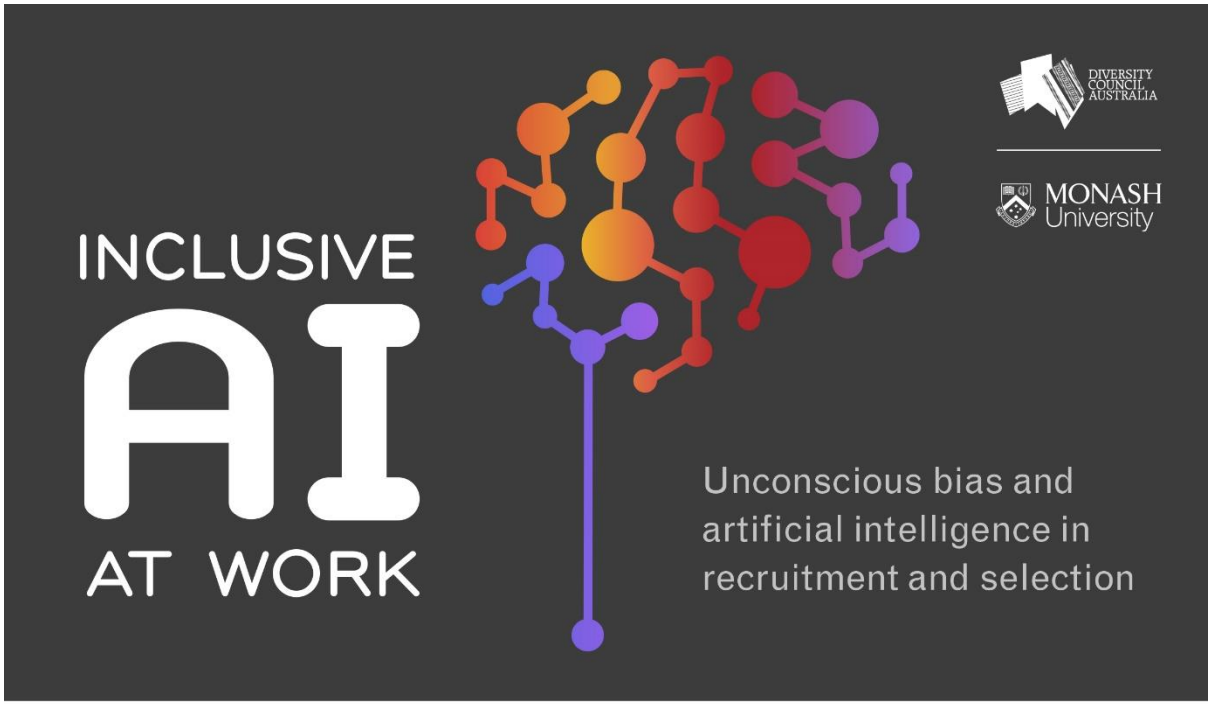
RECOMMENDATION 6: Regulation should consider measures to address impacts of AI and ADM on vulnerable groups.

RECOMMENDATION 6: Regulation should ensure that, where appropriate, there is an adequate level of human oversight of AI and ADM.

RECOMMENDATION 7: Education, skills and training programs or strategies that aim to improve AI skills should incorporate measures to include a diversity of people.

RECOMMENDATION 8: Australia's approach to AI regulation should ensure that a diversity of people work in AI development.

IV. DCA'S RESEARCH: INCLUSIVE AI AT WORK



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There is a risk of bias in AI and ADM tools, but this can be addressed

We are experiencing a fundamental transformation in the way organisations recruit and work, accelerated by the current COVID-19 pandemic, changing demographics, an increasingly globalised operating environment, and technological advancements.

Increasingly, businesses are using AI technologies that automate some, or all, of the recruitment process. On the one hand, recruitment software developers argue that their recruitment software and algorithms create a more efficient recruitment process and a better match between the job description and a job candidate's skills, qualifications and work experience. On the other hand, scholars, recruiters and job search websites are concerned about whether these new recruitment algorithms are subject to unconscious bias.

To address these concerns, DCA, with Monash University and Hudson RPO, is undertaking a series of studies exploring the impact of unconscious bias on recruitment and selection decisions that use artificial intelligence.

The first stage of this study, AI: Neither Friend nor Foe for D&I, was released earlier this year. This research asked hiring professionals, AI developers, academics and industry experts to share their insights into the use of AI tools in recruitment and their impact on diverse people.

This research found that:

> *Artificial intelligence (AI) can be an efficient, convenient, supportive and objective tool that is capable of analysing bias in recruitment.*
>
> *But for AI to support inclusive recruitment, there needs to be more support for people – recruiters, HR professionals and developers – on how to use these tools to eliminate rather than amplify bias. This means developers applying a D&I lens during the design and testing of these tools, and recruiters and HR professionals applying a D&I lens when AI tools are being deployed.*

There are risks if we fail to proactively eliminate bias in hiring algorithms:

> *Research tells us that most hiring algorithms drift toward bias by default as the algorithms reflect inherent (even if unconscious) biases and prejudices of their creators, who themselves are more likely to be racially privileged (and male).*

AI and ADM should be regulated to ensure that it eliminates, rather than perpetuates bias. This can be achieved through:

- Ensuring that the people who develop AI understand bias
- Ensuring that people with diverse lived experiences are involved in developing AI tools
- Ensuring that HR managers and recruiters who use AI tools have adequate education and training on how to use them in a way that eliminates bias
- Regulating for transparency and accountability on the part of AI developers and vendors.
- Regulation around AI ethics principles. Vendors should be required to show how their products conform to these principles.

A copy of the *AI: Neither Friend nor Foe for D&I* infographic is attached at Appendix A.

V. DCA'S RESPONSE TO ISSUES PAPER

7. Is there a need for new regulation or guidance to minimise existing and emerging risks of adopting AI and ADM?

Education and guidance on how AI works

DCA strongly supports education and guidance for people developing, and using, AI and ADM tools. Research shows that most Australians have a low understanding of how AI works and when it is used.[5] Further, our research[6] showed that people are using AI without any understanding of how it works:

> *AI is embedded in recruiters and HR professionals' daily work but they struggle to identify and articulate the inner workings of these tools and how they work in practice describing it as a DIY 'Black Box'.*

In our research, recruiters and HR professionals reported a lack of training on how to use AI to eradicate, rather than increase, bias. These respondents also reported a lack of clarity and transparency regarding what the AI tools did and how they worked.

This creates a risk that the use of AI tools could further entrench discriminatory hiring, for example by unfairly favouring male candidates in male-dominated occupations and industries.

These biases can also reinforce systemic bias in less obvious ways. For example, an AI recruitment tool may prefer candidates with qualifications from 'elite' universities. However, these universities are disproportionately attended by privileged individuals. AI therefore needs to be deployed by people who have an understanding both of how the algorithm works, and of bias and how it works in complex and sometimes subtle ways.

> *For AI to support inclusive recruitment there needs to be deep understanding of bias and how it plays out in AI systems, as well as in organisational practices.*

RECOMMENDATION 1: There is a need for guidance and education for people using AI tools, so they know what the tool does, how it works, and how it can be used in a way that eliminates bias.

Alerting people when they are interacting with AI

The risks of adopting AI and ADM should also be minimised by ensuring that people are alerted when they are interacting with an AI. For example, individuals who are interacting with AI, during a job recruitment process for example, may not know that they are involved in an activity that involves AI decision-making.[7]

Making individuals aware that they are interacting with AI is a critical part of educating people about these technologies.

RECOMMENDATION 2: Regulations should ensure that people are alerted when they are interacting with an AI, or when they are impacted by decisions made by AI or ADM.

Transparency and Accountability for AI Vendors

Our research found that, in order to address bias, AI Vendors need to make their data more transparent.

> *Leading practice AI vendors are addressing concerns about transparency and accountability by sharing or publishing their research on how these tools address bias; by sharing information about the data they feed into their software; or by running training workshops on using these tools to address bias in recruitment.*

RECOMMENDATION 3: There should be regulation on AI vendors that requires an adequate level of transparency and accountability.

Our research also found that, in order to help address bias, vendors should be required to demonstrate how their products conform to AI ethics principles:

> *Consider government regulation to address bias. One academic expert noted that legislation had been useful in addressing discrimination in recruitment practices, and that regulation could address certain uses of AI decision making. Industry and individual organisations can also opt to implement non-regulated standards for use around AI across recruitment. For example, the AI ethics principles framework of the Australian Government could be adopted as framework around AI that vendors would need to demonstrate how their products rate on each of the defined principles.*

RECOMMENDATION 4: AI and ADM vendors should be required to demonstrate how their products conform to AU ethics principles.

8.Would increased automation of decision making have adverse implications for vulnerable groups? How could any adverse implications be ameliorated?

Labour market disruptions

AI and ADM tools have the potential to change the way we work, which will impact on the labour market in a number of ways.

Research has shown that most Australians believe that AI will eliminate more jobs than it will create, and that there should be protections in place for people whose roles are lost to

automation (such as requiring advance notice, and opportunities for retraining and redeployment).[8]

With the rise of AI, computers are going to replace all sorts of knowledge jobs, including occupations and industries that have not previously been threatened by automation, for example in psychology or the legal profession.

The Foundation for Young Australians estimates that about 60 per cent of young people are being trained for professions that will be radically altered in the next 10 to 15 years.

In addition, researchers predict that the impacts of automation and artificial intelligence in the workforce will not affect all groups equally. For example, it is predicted that men and women will not equally experience job losses due to artificial intelligence and automation. While some estimates suggest that women will be more adversely affected than men by technological changes[9] other research suggests that the jobs most susceptible to automation are dominated by men.[10]

As the OECD[11] points out, history shows that workers have adapted to large technological changes by changing the tasks they perform. However, in the short term, changes to the labour market could have significant impacts on whole industries or specific communities.

This could create emerging vulnerable groups.

AI is also an emerging industry that has the potential to create new jobs. We need to ensure that a diversity of people are working in this industry. Australia should follow the EU's approach to AI, which aims to ensure that:

> *No one is left behind in the digital transformation. AI is changing the nature of work: jobs will be created, others will disappear, most will be transformed. Modernisation of education, at all levels, should be a priority for governments. All Europeans should have every opportunity to acquire the skills they need. Talent should be nurtured, gender balance and diversity encouraged.*[12]

RECOMMENDATION 6: Regulation should consider measures to address impacts of AI and ADM on vulnerable groups.

9. Are there specific circumstances in which AI or ADM are not appropriate?

Our research showed, when it comes to using AI in making hiring decisions, there is a need to ensure that AI is not the only data considered:

> *Don't treat AI as the all-knowing oracle but instead just one additional datapoint to add to your structured hiring process.*

We believe that this is an important principle for the considered use of AI and ADM more broadly.

RECOMMENDATION 6: Regulation should ensure that, where appropriate, there is an adequate level of human oversight of AI and ADM.

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?

Diversity in the AI field

If the people developing algorithms and ADM tools are not diverse, or trained in diversity and inclusion, there is a risk that the AI systems they develop will be biased.

> *… the AI field is also a male-dominated one. According to Reuters (2017), the percentage of female employees in technical roles in major Machine Learning companies is only around 20%. And the main problem is that, when those male developers create their systems, they incorporate, often in an unconscious way, their own biases in the different stages of its creation such as data sampling, annotation, algorithm selection, evaluation metrics and the human-algorithm user interface (Tolan, 2018). As a result, AI systems seem to be biased to male developers tastes.*[13]

This sort of bias has resulted in negative outcomes for diverse populations from AI and ADM tools. For example, early speech recognition software didn't recognise women's voices, Google's recommendation algorithm which serves up job adverts is more likely to recommend high-prestige and high-paying jobs to men than to women, and an AI tool from the U.S. America that makes sentencing decisions was found to disproportionately sentence African American men.

The EU's approach to artificial intelligence should be considered when developing Australia's approach. A key pillar of the EU approach is 'ensuring that AI works for people'.[14]

Included in this pillar is a focus on 'nurturing talent and improving AI skills'. Australia should focus on equipping people with the skills and knowledge needed to use AI effectively and fairly. Australia should also ensure that a diversity of people are working on developing AI.

RECOMMENDATION 7: Education, skills and training programs or strategies that aim to improve AI skills should incorporate measures to include a diversity of people.

RECOMMENDATION 8: Australia's approach to AI regulation should ensure that a diversity of people work in AI development.

VI. CONCLUSION & RECOMMENDATIONS

The increased adoption of AI and ADM has significant implications for workforce diversity and inclusion. While AI and ADM have the potential to improve the lives of Australians, there is a risk that these tools will create and reinforce bias. Proper regulation and guidance concerning the use of these tools can help minimise this risk. While the AI and ADM industry has the potential to create jobs, many Australians are also concerned about job losses. [15] We should ensure that there are protections in place for people whose jobs may be disrupted or lost to AI and ADM.

Australia should adopt an approach to regulation that ensures that AI and ADM 'works for people'.[16] Therefore, we make the following recommendations:

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VII. ENDNOTES

[1] European Commission, *AI Excellence: Ensuring that AI works for people*, updated 23 February 2022, online resource accessed at: https://digital-strategy.ec.europa.eu/en/policies/ai-people

[2] Lockey, S, Gillespie, N, and Curtis, C. *Trust in Artificial Intelligence: Australian Insights*, 2020, The University of Queensland and KPMG, accessed at: https://espace.library.uq.edu.au/view/UQ:b32f129.

[3] Lockey, S, Gillespie, N, and Curtis, C. *Trust in Artificial Intelligence: Australian Insights.*

[4] European Commission, *AI Excellence: Ensuring that AI works for people.*

[5] Lockey, S, Gillespie, N, and Curtis, C. *Trust in Artificial Intelligence: Australian Insights*, 2020, The University of Queensland and KPMG, accessed at: https://espace.library.uq.edu.au/view/UQ:b32f129

[6] Monash University/Diversity Council Australia, *AI in recruitment: friend or foe?,* Sydney, Diversity Council Australia, 2022, accessed at: https://www.dca.org.au/research/project/inclusive-ai-work

[7] DCA event, *AI for Inclusive Recruitment*, 2 March 2022, event transcript accessed online at: https://www.dca.org.au/event/542.

[8] Lockey, S, Gillespie, N, and Curtis, C. *Trust in Artificial Intelligence: Australian Insights*.

[9] Institute of Development Studies, *Rapid Response BRIEFING: Automation, Women, and the Future of Work,* Issue 1, July 2017, accessed at: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/13126/II_RRBBrief1.pdf?sequence=1&isAllowed=y

[10] Hanrahan C. and Evlin, L., 2017 'Artificial intelligence: Men's jobs face higher risk of automation than women, low-paid workers also at risk', *ABC News*, accessed online at: http://www.abc.net.au/news/2017-08-09/ai-automation-men-and-lower-paid-workers/8741518

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[11] OECD, 2017, *Going Digital: The Future of Work for Women, Policy Brief On The Future Of Work*, July 2017, accessed at: https://www.oecd.org/going-digital/Going-Digital-the-Future-of-Work-for-Women.pdf.

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A237%3AFIN

[13] E. Gomez, 2019, 'Women in Artificial Intelligence: mitigating the gender bias', The European Commission's science and knowledge service, published on Monday, 11/03/2019, accessed at https://ec.europa.eu/jrc/communities/en/community/humaint/news/women-artificial-intelligence-mitigating-gender-bias

[14] European Commission, *AI Excellence: Ensuring that AI works for people*.

[15] Lockey, S, Gillespie, N, and Curtis, C. *Trust in Artificial Intelligence: Australian Insights*.

[16] European Commission, *AI Excellence: Ensuring that AI works for people.*