

## Submission by Consumer Policy Research Centre to Department of Industry, Innovation and Science – Artificial Intelligence: Australia’s Ethics Framework

4 June 2019

By email: [artificial.intelligence@industry.gov.au](mailto:artificial.intelligence@industry.gov.au)

Dear Artificial Intelligence Ethics Framework Team,

The Consumer Policy Research Centre (CPRC) would like to thank you for the opportunity to respond to the Artificial Intelligence: Australia’s Ethics Framework Public Consultation Discussion Paper (Discussion Paper).

The CPRC is an independent consumer research organisation which undertakes research to inform policy reform and business practice change. Our goal is to achieve a fair outcome for all consumers. We conduct research across a range of consumer markets, with a focus on consumer decision-making, housing, consumer data and the online marketplace. We work collaboratively with academia, industry, government and the community sector.

The CPRC commends the timely release of this Discussion Paper and the extensive research on existing principles developed by other entities and jurisdictions contained within the paper. We strongly support the development of an AI Ethics Framework in Australia in combination with strengthening laws and regulation to protect consumers. This Discussion Paper is an important addition to the conversation around the development of AI in Australia and complements the Australian Human Rights Commission’s work on the governance of Artificial Intelligence.

CPRC strongly supports an ongoing conversation about ethical AI and responsible innovation in light of the significant forecasted growth of data-fuelled technologies and industries. CPRC has also urged governments to better fund independent non-profit and academic research undertaking work in data and AI given the growing number of consultations and collaborations emerging within government policy and industry. In 2018 CPRC established the Consumer Data Research Network (CDRN) of Australian academics working across the fields of privacy, competition law, consumer protection, machine-learning and AI to better support connection of research to key policy processes. This network does not yet receive any direct funding from policy and regulatory bodies that in turn benefit from greater access to evidence-based academic consumer research into AI and data. CPRC also regularly connects academics with policy and legislative processes to build greater shared understanding across the sectors. Australia may also learn from existing models internationally, where entities have been actively supported to provide research, advice and ethical governance to AI developments.

## Data as the fuel for AI

The regulation of data is intertwined with ethical AI innovation. AI systems are dependent on data as an input. Any errors or biases present in data will influence AI outcomes.<sup>1</sup> At the same time the current 'black box' nature of AI algorithms creates extreme difficulty for policymakers, regulators and consumers themselves to identify and correct inaccurate information, bias or discriminatory or exclusionary practices. Consequently, policy responses to encourage ethical AI developments should incorporate consideration of the data governance framework. For example, European data protection law is considered an integral part of its AI regulatory safeguards. The law affirms consumers rights around their data and places obligations – including transparency - on those entities processing that data.<sup>2</sup>

CPRC recently published a report on the data collection environment, *A Day in the Life of Data*<sup>3</sup>, that examines current data collection, sharing and use practices and the potential harms from this environment. These findings also apply to AI applications built on large-scale datasets collected and operated in an opaque market environment. Key policy responses to improve consumer autonomy, choice and control in this environment include: increasing transparency, consumer control and comprehension; accountability and explainability mechanisms; minimum protection standards, and prohibitions on unfair business practices. These elements intersect with an AI principles-based ethical framework and the report is attached to this submission for your reference.

Our research indicates that Australia does not currently have an adequate data protection regime in place at present to support ethical AI developments. Data collection, use and sharing practices are opaque. Consumer research conducted on behalf of CPRC found that consumers do not fully understand the level of information being collected about them and that consumers want greater transparency and more control over how companies collect, use and share their data.<sup>4</sup> The ability to promote responsible innovation in AI will be restricted if the arrangements governing its fuel – data – remain unclear. For example, consumers may find it difficult to trust the operations and outcomes of systems that depend on suspect data collection practices, limiting full take-up of services. As CPRC has advised in submissions to the ACCC Digital Platform Inquiry and the Consumer Data Right consultations, we would advocate for a full review of our competition, consumer protection and privacy frameworks to introduce economy-wide reforms to give consumers more protection and agency in the collection, sharing and use of their data. A modern data policy framework would provide a base on which to consider optimal policy approaches for regulating AI systems, including the introduction of an AI ethical framework.

## Are the principles put forward in the discussion paper the right ones? Is anything missing?

CPRC considers that the framework reflects international thinking around AI ethical principles. We have some specific comments on how some of the principles could be more fully expressed.

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<sup>1</sup> Hurd W and Kelly R. (September 2018). *Rise of the Machines. Artificial Intelligence and its Growing Impact on U.S. Policy.* p.10

<sup>2</sup> Zuiderveen Borgesius, F. (2018). *Discrimination, artificial intelligence, and algorithmic decision-making.* Council of Europe. p.21

<sup>3</sup> Richmond, B (2019), [A Day in the Life of Data](#), CPRC

<sup>4</sup> Nguyen, P. and Solomon, L. (2018) [Consumer data and the digital economy](#). CPRC. (p. 3-4)



### **Principle 1 Generates net benefits**

CPRC considers that a core principle in the design, development and introduction of AI systems should be that they offer economic and social benefits to all Australians.

This principle, as it is currently expressed, does not make it clear how a net benefit would be defined or measured and who would be making that decision. A cost-benefit analysis by the AI developer may not be appropriate in all contexts, and runs the risk of the prioritisation of narrow, short-term analysis that minimises the broader risks. It will be important to add some guidance as to how this net benefit is calculated, or to expand the explanation of this principle to explicitly refer to services creating social benefits for all Australians.

### **Principle 2 Do no harm**

CPRC agrees that a core principle of an AI Ethics Framework should be 'do no harm'. We note that the 'do no harm' principle discusses design and implementation. CPRC considers that this principle should explicitly recognise, and require, the consideration of harms potentially generated by AI systems beyond design and implementation. That is, the potential harms from the uses of the AI system for other uses, over time, and in different contexts should also be considered when assessing risks.

A key part of the 'do no harm' principle will be recognising that consumers have a right to autonomy and choice. Technological developments have enabled far greater monitoring of consumer's behaviour and mood, and there are concerns that this data is being used to influence and manipulate consumer behaviour.<sup>5</sup> The widespread deployment of AI systems built on these datasets are likely to exacerbate this problem. Consequently, it is important to incorporate the principle of consumer autonomy into AI ethical principles.

### **Principle 4 Privacy Protection**

CPRC supports the inclusion of privacy protections into the AI ethical framework. We would note that our ongoing policy work and research highlights the current gaps in our privacy framework in Australia.<sup>6</sup> Australians' behaviour, preferences, biometric data, and other indicators are regularly tracked online and offline by products and services that share information with each other and data brokers to create detailed online consumer profiles. These profiles are often used to predict and influence consumer behaviour and support automated decision-making, all without the consumer being aware that the data was collected or being used in this way.<sup>7</sup>

This environment will only be exacerbated in the AI environment without intervention. Economy-wide reforms to deliver greater transparency, choice, meaningful consent and control to consumers and citizens will be needed in order to provide force to this principle.

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<sup>5</sup> Richmond, B (2019), [A Day in the Life of Data](#), CPRC, pp.34-35

<sup>6</sup> For example, see CPRC submission to [Inquiry into Treasury Laws Amendment \(Consumer Data Right\) Bill 2019](#) (28 February 2019) and CPRC submission to the [Consultation on the ACCC Digital Platforms Inquiry Preliminary Report](#) (15 February 2019) and CPRC reports [Consumer Data and the Digital Economy](#) (2018) and [A Day in the Life Of Data](#) (2019)

<sup>7</sup> Richmond, B (2019), [A Day in the Life of Data](#), CPRC, p.4

## Principle 5 Fairness

CPRC strongly supports this principle. The opaque data collection, sharing and use environment enables unfair discrimination and exclusion. For example, companies like Credit One use “E-Scores” – based on a user’s online behaviour and usage – to determine the advertisements shown to an individual.<sup>8</sup> Some US insurers are reportedly experimenting with using information like social media activity, location data, and transaction history, to determine insurance access and cost.<sup>9</sup> Explicitly requiring consideration of potentially discriminatory outcomes when designing, implementing or operating AI processes would be one lever in supporting fair outcomes.

CPRC would recommend that this principle incorporates requirements for:

- the design team and the ‘training data’ used to reflect the diversity of society, and
- fairness to be considered at every stage of development, from design to implementation to operation, and
- fairness to be checked with a broad and diverse range of stakeholders, potentially even publicly published – including the general public – to ensure that outcomes for a broad range of demographics are considered before the AI services is released. We highlight again here that one of the key ways to minimise risks is to consult broadly and include diverse stakeholders. If there is no funding provided to non-profits, their capacity to participate is limited.

CPRC is also strongly supportive of a general unfair trading prohibition being introduced in Australian Consumer Law. Given the speed with which technology will evolve, regulators having a capacity to identify and address exploitative and unfair commercial practices will be critical.

## Principle 6 Transparency and Explainability

CPRC agrees that transparency and explainability will be core principles. We would note that, as discussed above, the data collection, sharing and use market that will fuel AI is currently very opaque and that change in this market will be necessary to support the principles of transparency in AI.<sup>10</sup>

We would recommend the inclusion of consumer comprehension in this principle. Transparency is meaningless without ensuring that the information or explanation provided can be easily comprehended by the average consumer. Customer trust in the current data collection, sharing and use environment is low due to its opacity and the impenetrable privacy policies that underpin data practices. Given that AI will run on access to large-scale datasets, it will be imperative to build consumer trust in the development of those systems. Part of this process will be ensuring that consumers are given easy to comprehend information on how their data is being used and for what purpose. This obligation to obtain consumer comprehension should be placed on companies and entities producing the AI, not the full burden being placed on consumers themselves.

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<sup>8</sup> O’Neil, C (2016), Weapons of Math Destruction, cited in Richmond, B (2019), [A Day in the Life of Data](#), CPRC, p.36

<sup>9</sup> Heller, N (26 February 2019), “Why the Life-insurance Industry Wants to Creep on your Instagram,” New Yorker, cited in Richmond, B (2019), [A Day in the Life of Data](#), CPRC, p.36

<sup>10</sup> Richmond, B (2019), [A Day in the Life of Data](#), CPRC, p.12



### **Principle 7 Contestability**

CPC strongly supports this principle and considers that it would be beneficial to provide more information on what constitutes 'significant impact' and who determines that – the consumer, the service, or another entity.

If you have any questions or would like further information regarding this submission, please don't hesitate to contact Senior Research & Policy Officer, Brigid Richmond on 03 9639 7600 or [brigid.richmond@cprc.org.au](mailto:brigid.richmond@cprc.org.au).

Yours sincerely,



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**Consumer Policy Research Centre**

