

***SAFE AND RESPONSIBLE AI IN AUSTRALIA***

*'Automation has the potential to increase productivity, efficiency, accuracy, and the cost-effectiveness of service delivery. A trustworthy automated system is a system containing automation that is ethical, lawful and technically robust, coupled with good governance and risk management. To achieve trustworthiness, the system must be designed with human agency at its centre.'* (Robodebt Report)

The Robodebt Inquiry into the Australian Federal Department of Human Services' use of Automated Decision Making details precisely the real-life impact (as opposed to the mere risk) of this technology. What is important now, according to cybernetic theory, is direct response to feedback. In the following, we propose that specific roles of the Department of Industry, Science and Resources should include:

- a) Mutual audit of Department of Defence and Department of Home Affairs' technological developments, overseen by the Human Rights Commission;
- b) Overseeing implementation of Robodebt findings across all Federal Government Departments;
- c) Funding communities to strengthen existing safety laws and protocols via dialectic, critical thinking and access to justice.

**1. What should the government NOT do?**

**1.1 Abdication of Sovereignty**

*'In holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific technological elite. It is the task of statesmanship to mould, to balance, and to integrate these and other forces, new and old, within the principles of our democratic system - ever aiming toward the supreme goals of our free society. The potential for the disastrous rise of misplaced power exists and will persist.'*<sup>1</sup> (Former US President, D. Eisenhower)

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<sup>1</sup> Eisenhower, D.D. 1960, Military Industrial Complex speech, accessed from Yale Law School, Lilian Goldman Law Library, [https://avalon.law.yale.edu/20th\\_century/eisenhower001.asp](https://avalon.law.yale.edu/20th_century/eisenhower001.asp) on 12 April 2022.

We propose a moratorium on Automated Decision Making (ADM) throughout the executive branch of government until human rights and anti-corruption safeguards are fully operable. Humans authorised by a clear line of delegation must maintain sovereign responsibility for all government decisions.

### 1.2 Imperial / 'Chain-of-Command' Response

*'It is remarkable how little interest there seems to have been in ensuring the scheme's legality, how rushed its implementation was, how little thought was given to how it would affect welfare recipients and the lengths to which public servants were prepared to go to oblige ministers on a quest for savings" the report said.'* (Robodebt Report)

Expedited 'chain of command' models are problematic to democratic sovereignty and have already compromised each of the following federal government departments, potentially causing 'data poisoning' in existing datasets and protocols:

1. Department of Human Services, including MyGovID<sup>i</sup>
2. Australian Taxation Office<sup>ii</sup>
3. Office of Prime Minister & Cabinet<sup>iii</sup>
4. Governor General<sup>iv</sup>
5. Human Rights Commission<sup>v</sup>
6. Federal Anti-Corruption Commission cf 'the new administrative review body'<sup>vi</sup>
7. Five Eyes / J5 / AUKUS<sup>vii</sup>
8. Department of Defence<sup>viii</sup>
9. Department of Home Affairs<sup>ix</sup>

## **2. What should the government DO?**

### 2.1 Emergency Response

The Department of Industry, Science and Resources should respond directly to real-life impacts by implementing the findings of the Robodebt Report across all federal government departments. (The Department of Defence may be of assistance in funding this role as an exercise of 'Digital Nation

Building', however military officers trained to operate under a 'chain of command' must not be directly involved.)

## 2.2 Mandatory Human Rights

References throughout consultations and reports to 'Optional Human Rights Protocols' must be amended immediately. Human rights are mandatory! A Federal Human Rights Act<sup>2</sup> must be implemented as a matter of urgency. Until then, Australia is already bound by the International Protocol on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC).

## 2.3 Separation of Powers

We propose that the Department of Defence, Department of Home Affairs and Department of Science, Industry and Resources adopt a mutual audit model, overseen by a properly appointed Human Rights Commissioner, to create a 'Separation of Powers' system of checks and balances consistent with the Australian Constitution and human rights obligations mentioned above. Currently, there appears to be a significant emphasis on risk-based models by the Department of Defence (responsible for defence) and the Department of Home Affairs (responsible for security), however the roles appear to be blurred and oversight distinctly lacking, creating the potential for exponential risk.

## 2.4 Rule of Law

*'In the midst of every crisis, lies great opportunity' (Albert Einstein)*

Given that defence and security are already risk-based models, an 'opportunity-based model' lies in Department of Industry, Science and Resources being responsible instead for 'good governance'. To execute this function only by adding a third level of risk-management, opens liability in a mutable digital landscape as rife with risk as the real and intellectual landscapes underlying the data plane. It is also potentially unconstitutional if risk models overstep Constitutional Heads of Power. Under a wholesale risk-based model, the Department of Industry, Science and Resources also risks repeating the fallacy of 'Terra Nullius', to the detriment of 'Backward Peoples'<sup>3</sup> (ie humans, relative to a super-

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<sup>2</sup> Australian Human Rights Commission, Position paper: A Human Rights Act for Australia  
[https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)

<sup>3</sup> 'The acquisition of territorial sovereignty by the Crown over Australia is now said to be claimed under the 'Occupation of Backward Peoples doctrine'. Under this doctrine, the British acquired an original, plenipotent sovereignty that instantaneously swept across the 3,000,000 square kilometres of claimed territory of 'New South Wales' on 7 February 1788, and across the balance of continental New Holland in 1824 and 1829. The Australian territories were treated as sovereign-less because the Indigenous societies were seen to be 'backward peoples', being human but without a full complement of human rights, and so low on a scale of civilisation that they were not possessed of anything resembling 'sovereignty', their territories *terrae nullius*.' Lavery, Daniel, Judicial Distancing in the High Court: Love /Thoms v

intelligent government). The Department of Science, Industry and Resources should mobilise communities to audit and strengthen existing legal and cultural safety standards, such as: ...

Laws:

- Criminal law eg incitement, fraud;
- Privacy law eg Australian Information Commissioner using their powers under the Privacy Act against Clearview AI for using peoples' photos scraped from social media without permission;
- Competition & Consumer law eg misleading information;
- Copyright / Trademark Law;
- Discrimination law;
- Freedom of Information;
- Employment Law;
- Parental Advisory Classifications;
- Product Safety Rules and Standards;

Community standards:

- Scientists: Scientific method eg double-blind experimentation and peer review;
- Engineers: International Organisation for Standardization (ISO);
- Lawyers: Codes of conduct;
- Academia: Academic misconduct;
- Doctors: Hypocritical Oath;
- Journalistic integrity: Standards of Practice;
- Business: 'Good Faith' and worker unions; etc.

The rule of law requires that each of these professional communities engage in dialectic and critical thinking to extrapolate their knowledge of the physical world to the digital stratosphere.

## 2.5 Empirical / Democratic Response

*'The use of dialectic and critical thinking, which are core elements of Socrates' philosophy, are important tools in the development and implementation of AI algorithms.'* (ChatGPT)

Any attempt to gatekeep licencing based on a top-down risk-based model ignores a fundamental feature of AI: It is a language, not a vehicle. Where existing laws and standards (such as those listed above) contain gaps, the role for the Department of Industry, Science and Resources is to encourage generation of 'good data' by promoting democratic, empirical science, funding the conversational dialectical conversation. This will empower communities to negotiate real-life impacts: To consult teams of lawyers and technologists to adapt their existing standards; and fund access to justice where human rights and other laws are breached.

## **CONCLUSION**

In the field of cybernetics, the focus for active response is on precise real-life impacts. We submit that the findings of the Robodebt Report should be implemented across all Federal Government Departments. Throughout this process, human rights are mandatory. Checks, balances and peer review require separation of powers between the three departments officially responsible for AI deployment: Defence, Home Affairs and Science/Industry/Resources. The Rule of Law requires mobilisation of communities to engage in dialectic with legal and technological professionals to strengthen existing legal and community safety standards. The Australian government must not abdicate sovereignty by utilising Automated Decision Making without human interface, particularly where the design response is per an imperial 'chain of command' rather than empirical dialectic and critical thinking. The specific roles of the Department of Industry Science and Resources should be:

- a) Mutual audit of the Department of Defence and Department of Home Affairs' technological developments, overseen by the Human Rights Commission;
- b) Overseeing implementation of Robodebt findings across all Federal Government Departments;
- c) Funding communities to strengthen existing safety protocols via dialectic, critical thinking and access to justice.

**About the author**

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<sup>i</sup> Services Australia:

1. Closely related to the 'Robodebt' system, MyGovID is required for Centrelink recipients and employers of foreign workers to meet legal requirements by accessing the Jobseeker platform. Years after being compelled to sign up, users were issued an automated notice indicating that the government would accept no liability for data security and offering an option to 'opt out', though biometrics had already been collected. \$7B was spent on contractors under the Jobseeker program (a practice also heavily criticised by the Robodebt Report), precisely at a time when Covid-19 vaccines also cost \$7B, and the HomeBuilder program cost \$2.3B. This rampant expenditure contributed substantially to subsequent inflation, skills shortages, interest rate rises due to low unemployment (still reported using an unreliable 'household survey' statistical method) and critical housing shortages.

<sup>ii</sup> Australian Taxation Office:

1. Between 2013 and 2018, between 20 and 30 PwC partners and staff were involved in sharing confidential government tax policy obtained in the course of consulting to the Australian government. (<https://www.afr.com/companies/financial-services/pwc-leaks-scandal-widens-20230215-p5ckvv>)
2. Owing to confidentiality, it is unknown how recipients were advised to structure their affairs, nor which of PWC's clients are likely to have implemented avoidance structures. Subsequently, *'the Australian Tax Office began using artificial intelligence to identify suspicious activity within the complicated affairs of wealthy individuals and companies. ANGIE (Automated Network & Grouping Identification Engine) creates maps of corporate entities and related transactions across time.'* (September, 2022) (<https://www.afr.com/politics/federal/meet-angie-the-ato-s-secret-weapon-to-beat-wealthy-tax-cheats-20220913-p5bhqd>)
3. On 13 July 2020, at its 2-year meeting, the Joint Chiefs of Global Tax Enforcement (J5) reported that hundreds of international data exchanges have occurred with more data being exchanged in the past year than the previous 10 years combined. Notably, the J5 does not include the Bahamas (where FTX collapsed), nor British Overseas Territories such as the Cayman Islands. (<https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Joint-Chiefs-of-Global-Tax-Enforcement/>)
4. 50,000 letters (an inhuman amount) were sent out to the personal address of company directors with ATO debt. *'Approximately one third of those letters were sent to companies in the property and construction industry'* which soon collapsed, contributing significantly to a housing crisis. (April, 2022) (<https://www.accountantsdaily.com.au/tax-compliance/16938-time-running-out-for-50-000-nervous-directors-with-ato-debt>)
5. *'Court actions against insolvent businesses and individuals have jumped 54 per cent in the past year, as the Australian Taxation Office tightens its lax approach towards outstanding debts from the pandemic and steps up enforcement.'* (August, 2022) (<https://www.afr.com/companies/professional-services/court-actions-jump-54pc-as-ato-hunts-down-debts-20220811-p5b8zh>)
6. *'Taxpayer threats of suicide went ignored by senior Adelaide staff members.'* (September, 2022) (<https://www.afr.com/companies/professional-services/woman-thwarts-ato-in-high-court-20221012-p5bp70>)
7. *'High Court blocks Australian Tax Office claim on woman's family home.'* (October, 2022) (<https://www.afr.com/companies/professional-services/woman-thwarts-ato-in-high-court-20221012-p5bp70>)
8. *'Follow-up reviews confirmed that Mr Boyle's revelations of aggressive debt-recovery practices at the ATO at the time were valid, with the small business ombudsman saying the agency's then treatment of small businesses was "crippling".'* (March, 2023)

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([https://amp.abc.net.au/article/102148790#amp\\_tf=From%20%251%24s&aoh=16799113500104&csi=0&referrer=https%3A%2F%2Fwww.google.com](https://amp.abc.net.au/article/102148790#amp_tf=From%20%251%24s&aoh=16799113500104&csi=0&referrer=https%3A%2F%2Fwww.google.com))

9. *'Treasury aims to claw back \$9.1 billion in unpaid tax over the next five years by cracking down on compliance with the GST, personal income tax and financial crime. The tax office will receive \$588 million in funding for increased GST compliance, which is estimated to rake in \$788 million in revenue next financial year alone, and \$3.8 billion for the four financial years from July 1, 2023. The compliance measures are in addition to a broader push by the Albanese government to improve revenue by \$13.7 billion via measures including a minimum 15 per cent tax on multinationals and tightening taxes on LNG producers. The tax office will also ramp up the scope of investigations into "emerging areas of risk" such as deductions to personal income tax related to letting short-term rentals that were not genuinely available to rent. The government also planned to improve engagement with taxpayers which would, according to the budget papers, "ensure timely payment of tax". The tax office hoped that the total revenue from all its compliance activities – meaning all its attempts to recover unpaid tax – would hit \$15 million this financial year. The Treasury budget statement said it was on track to meet this, and that it aimed to increase that figure to \$15.7 billion in 2023-24.'* ([https://amp.abc.net.au/article/102148790#amp\\_tf=From%20%251%24s&aoh=16799113500104&csi=0&referrer=https%3A%2F%2Fwww.google.com](https://amp.abc.net.au/article/102148790#amp_tf=From%20%251%24s&aoh=16799113500104&csi=0&referrer=https%3A%2F%2Fwww.google.com))

iii Office of Prime Minister & Cabinet:

1. *'The Australian Government received correspondence from Open Government Partnership International on 15 February 2022: 'This letter is to inform you that as of the deadline of 31 December 2021, the Support Unit has not received Australia's 2021-23 Action Plan, and therefore has acted contrary to the Open Government Partnership process.'* (Australian Government Department of the Prime Minister and Cabinet, OGP International Advice to Australia, 22 February 2022, accessed from <https://ogpau.pmc.gov.au/news/ogp-international-advice-australia-on-22-April-2022>.)
2. *'The Australian Government's Management of Covid-19 quarantine arrangements and its vaccine rollout constitute two of the worst failures of public administration in living memory. The government has also failed to address the serious and dangerous vaccine misinformation promoted within the government's own parliamentary ranks. The Senate Select Committee on Covid-19 is disappointed that it has been prevented from providing vital oversight of the management of the government's Covid-19 response by spurious claims of public interest immunity by ministers and government officials. Access to information has been restricted.'* (The Senate Select Committee on Covid-19 Final Report, April 2022, [Parlinfo.aph.gov.au](http://Parlinfo.aph.gov.au).)
3. *'Groupthink' has poisoned the implementation of AI under models designed to 'Position Australia as a leader in Digital Economy Regulation'. This framing biases consultation towards 'making it work' as opposed to carefully contemplating the need to balance efficiency with legality and ethics, precisely per the findings of the Robodebt Report.*

iv Governor General on behalf of the Crown:

1. Secret Ministries ([https://www.sbs.com.au/news/article/scott-morrison-also-tried-to-be-environment-minister-heres-his-response-to-the-secret-ministries-report/bi717qobm?utm\\_source=newsshowcase&utm\\_medium=discover&utm\\_campaign=CCwqGQgwKhAlACoHCAowzYuBCzDM\\_PsCMLHrhAEwhuuUAQ&utm\\_content=bullets](https://www.sbs.com.au/news/article/scott-morrison-also-tried-to-be-environment-minister-heres-his-response-to-the-secret-ministries-report/bi717qobm?utm_source=newsshowcase&utm_medium=discover&utm_campaign=CCwqGQgwKhAlACoHCAowzYuBCzDM_PsCMLHrhAEwhuuUAQ&utm_content=bullets))
2. *'Mystery foundation established less than a year ago by a businessman with connections to the royal family has managed to secure more than \$18 million in federal funding, but the man behind it is refusing to outline how the program will run or when it will launch. The Australian Future Leaders Foundation Limited — which appears to have no office, website or staff, apart from three directors — received the five-year cash injection in last week's budget. Several sources have told the ABC that its executive officer and director, Chris Hartley, boasted that he secured federal support*



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more than a year before it was publicly announced. ... there was no tender process.’  
([https://www.sbs.com.au/news/article/scott-morrison-also-tried-to-be-environment-minister-heres-his-response-to-the-secret-ministries-report/bi717qobm?utm\\_source=newsshowcase&utm\\_medium=discover&utm\\_campaign=CCwqGQgwKhAIACoHCAowzYuBCzDM\\_PsCMLHrhAEwhuuUAQ&utm\\_content=bullets](https://www.sbs.com.au/news/article/scott-morrison-also-tried-to-be-environment-minister-heres-his-response-to-the-secret-ministries-report/bi717qobm?utm_source=newsshowcase&utm_medium=discover&utm_campaign=CCwqGQgwKhAIACoHCAowzYuBCzDM_PsCMLHrhAEwhuuUAQ&utm_content=bullets))

<sup>v</sup> Human Rights Commission: ‘The Australian Human Rights Commission was not reaccredited as an A-status national human rights institution. The key concern of the National Human Rights Institution (NHRI) was the selection and appointment process for Commissioners, with three appointments in this timeframe that did not meet the accreditation requirements.’ (Australian Human Rights Commission, Statement on international accreditation of the Australian Human Rights Commission, 7 April 2022, accessed from <https://humanrights.gov.au/about/news/statement-international-accreditation-australian-human-rights-commission-on-22-april-2022>.)

<sup>vi</sup> Federal Anti-Corruption Commission:

1. ‘Australia’s worst-ever corruption score points to urgent need for National Integrity Commission’, 25 January 2022 (<https://transparency.org.au/worst-ever-corruption-score/>)
2. ‘The federal government’s plan to establish an anti-corruption commission looks less and less likely to be introduced to parliament before Christmas. First floated in 2018 ...’ (Doran, Matthew, Federal anti-corruption commission unlikely to be established this year, as days left to pass legislation tick down, ABC News, 23 November 2021, accessed from <https://www.abc.net.au/news/2021-11-23/federal-integrity-commission-unlikely-this-year/100640238> on 22 April 2022.)
3. Meanwhile, a new Administrative Review Tribunal was established in approximately six months. No information has been released in relation to whether Automated Decision Making will be implemented. This is of particular important in relation to the AAT’s role in issuing warrants under electronic surveillance legislation.  
([https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6623](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6623)).

<sup>vii</sup> AUKUS: Australia has been roped into AUKUS by a Government categorically voted out shortly after entering the \$368B agreement with a nation on the verge of foreclosure  
(<https://www.reuters.com/world/biden-facing-debt-ceiling-debate-could-skip-australia-part-asia-trip-2023-05-16/>). Pressure is also being mounted under AUKUS to override Australia’s sovereign stance on nuclear power. Japan was similarly roped into nuclear proliferation by the USA, placing Fukushima nuclear plant on a triple fault line within a fallout radius of Tokyo. Japan’s population has since collapsed. Together with J5 and Five Eyes, the AUKUS multi-national alliance represents a threat to Australia’s sovereignty (as well as US ‘Independence’). (AUKUS is also notably related to Robodebt).  
(<https://www.abc.net.au/news/2023-07-20/kathryn-campbell-suspended-without-pay-over-robodebt/102623918>))

<sup>viii</sup> Defence:

1. The Department of Defence ‘defends democracy. It doesn’t practice it.’ AUKUS’ (then called ‘the coalition’) unlawful attack on Iraq was based on misinformation from the UK’s MI6 and USA’s CIA. In Afghanistan, 39 allegedly unlawful killings led to the suicide of 11 ADF members. ABC offices were raided by the Australian Federal Police when they attempted to research the story. Captain Angus Campbell has since been found to be a murderer on the balance of probabilities; and General Angus Campbell prevented from handing back his Afghanistan medal.
2. Hunter Killer drones can now use facial recognition to identify a target. Regardless of whether this method is more accurate than land mines, it is an act of terror that loses the ‘Hearts and Minds’ development project.
3. The Department of Defence have recently awarded a grant to merge AI with human brain cells. Ethical oversight is advised.

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(<https://www.theguardian.com/technology/2023/jul/21/australian-dishbrain-team-wins-600000-grant-to-develop-ai-that-can-learn-throughout-its-lifetime>)

4. Weaponisation of technology is also a constant consideration. See for example, Boston Dynamics' open letter requesting that general purpose robots not be weaponised: <https://bostondynamics.com/news/general-purpose-robots-should-not-be-weaponized/>
5. Not only is the Department of Defence responsible for AI in defence, but a military officer has been sequestered to Home Affairs. This indicates no separation of powers.

<sup>ix</sup> Department of Home Affairs:

1. *'In July 2021, global corporation, Accenture, secured a lucrative contract to help the federal government overhaul its visa infrastructure. A similar \$1 billion visa processing plan had been abandoned in March 2020 after costing taxpayers \$170 million because of issues including resistance from Labor, the Greens and key crossbenchers to a Global entity appropriating the Australian Government's Sovereignty. The Department of Home Affairs claimed that "no contract had been awarded". Accenture had been one of the candidates and announced in September 2020 that they would be establishing a hub in Adelaide. The investment would include the development of National Security Operations and Cyber Defence capabilities, new Advanced Technology Centres of Excellence in areas to develop and deploy advanced analytics and artificial intelligence, with over \$1 billion expected to be injected into the South Australian economy. Home Affairs Minister Claire O'Neil has since stated that the visa processing system requires 'terrifying levels of human involvement' (<https://www.afr.com/work-and-careers/workplace/visa-systems-should-be-able-to-pick-out-power-couples-o-neil-20230222-p5cmj9>). Details have not yet been released in relation to the overhaul to the visa system due later this year, yet already temporary visas have been granted in inhuman timeframes, indicating use of Automated Decision Making (ADM), to tourists from 'high risk countries' and international students who lack sufficient funds to cover living expenses and whose work rights have now been restricted. Owing to sudden overpopulation, housing shortages are critical and emergency food banks overwhelmed.*