



THE LAW SOCIETY
OF NEW SOUTH WALES

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11 April 2024

Hon Jeremy Buckingham MLC
Committee Chair
Portfolio Committee No. 1 – Premier and Finance
Parliament House, Macquarie Street
Sydney NSW 2000

By email: PortfolioCommittee1@parliament.nsw.gov.au

Dear Mr Buckingham,

Artificial intelligence (AI) in New South Wales – Post-hearing responses

Thank you for the opportunity to review the transcript and provide answers to questions taken on notice by the Law Society of New South Wales during the hearing before the Portfolio Committee No. 1 (**Committee**) on Monday, 11 March 2024 for the Inquiry into Artificial intelligence (**AI**) in New South Wales.

We do not propose any changes to the evidence given by the Law Society in the draft transcript.

The Law Society's responses to the questions taken on notice during that appearance are provided below.

Question

The CHAIR: Mr McGrath, did you want to make a point?

BRETT McGRATH: Yes. To add to Dr Kremer's point there, firstly, for the member, you spoke about whether or not prohibited practices should perhaps be put in any reform. The Law Society has advocated that there is a flexible approach but a principles-based approach. The nature of regulation across the world is accelerating and, obviously, making our submissions outdated to a degree. California is a jurisdiction which I encourage the inquiry and Committee members to investigate. Obviously, that's the home of AI in that state. They are exploring options that may include things like kill switches. I understand that that's not formulated yet into any proposed legislation; they are still in the formative stages. But that jurisdiction, I imagine, would be the lead jurisdiction for AI tech companies in the Bay Area of San Francisco where these are coming out of. I encourage the New South Wales Government to look at that jurisdiction very closely.

On the point of automation and cars, I agree with Dr Kremer on that point. Again, we as the Law Society are encouraging the inquiry to look at the laws and regulations which apply at the moment and how AI and generative AI fits into the current framework. For example, for automated cars, if you've got a driver there, there's case

law in—if I can take it on notice, the country, I believe, was Turkey. However, I don't want to give false evidence on that front. The driver in an automated car was found to be liable for the injury to the person. However, it arose whether or not he had a cause of action against the tech company that had the automation software within the car itself.

Answer

The matter that I was recalling in my evidence was the Californian case where a jury found that a manufacturing defect in Tesla's Autopilot system was not responsible for a fatal accident. See articles reporting the decision in the *Guardian* [here](#) and *Reuters* [here](#).

Question

Ms ABIGAIL BOYD: I'll come to the Law Society. I think another example that I've have come across that I found interesting was that Transport were using smart CCTV, as they call it, to identify where there was trouble on train stations. You could get a situation where there was a group of kids actively up to trouble but then you could also get a group of kids who were just mucking around with each other and the question was what is the danger of police or transport officials going out to check? From a human rights perspective, or from the perspective of not wanting people to be unduly harassed or over-policed, is it sufficient if we have something in between an action being taken if that sort of bias is leading to people being contacted more than they might otherwise be? Have you got any reflections on this, Mr McGrath?

OLGA GANOPOLSKY: I'm happy to take that question and expand—as a very large body of work has gone into this thinking—and then take some of it on notice as well as to address some of the issues now.

Answer

There is a growing body of work examining the human-rights implications of AI in the context of government decision-making. As a starting point, we refer the Committee to recent work by the Australian Human Rights Commission (see, for example, the Technical Paper titled [Using artificial intelligence to make decisions: Addressing the problem of algorithmic bias](#)).

We also refer the Committee to the publications of the [Human Technology Institute](#) at UTS for a useful body of resources, particularly with regard to the need for responsible innovation in the context of AI-assisted decision-making in both the government and corporate sectors. We note that the Human Technology Institute appeared before the Committee to give evidence in the context of the current inquiry.

Question

The Hon. JACQUI MUNRO: On those 700 conversations that are happening at the moment, whereabouts does that come from? How do you have that number? It would be great to get a list of those if you have it.

OLGA GANOPOLSKY: I'm happy to dig that out and share it with you, and the references. Essentially it's a body of work conducted by a variety of regulators, both from ethical perspectives—so that includes data protection authorities in all the jurisdictions that have been considering this. We are happy to share with you that reference.

Answer

We refer the Committee to the breadth of conversations on this subject, as evidenced by the Global AI Law and Policy Tracker that has been developed by the International Association of Privacy Professionals (IAPP) AI Governance Center, available [here](#). The tracker seeks to 'identify legislative or policy developments or both in a subset of jurisdictions' as well as offer 'brief commentary on the broader AI context and related developments'.¹

Thank you again for the opportunity to contribute to this inquiry. Should you require any further information, please contact Sophie Bathurst, policy lawyer on 02 9926 0285 or email sophie.bathurst@lawsociety.com.au.

Yours sincerely,



Brett McGrath
President

¹ IAAP, [Global AI Law and Policy Tracker](#) (Online Tool, updated February 2024).