SUBMISSION | NEW SOUTH WALES

BAR ASSOCIATION

Australian Human Rights Commission

Human Rights and Technology Discussion Paper

20 May 2020

Promoting the administration of justice

The NSW justice system is built on the principle that justice is best served when a fiercely independent Bar is available and accessible to everyone: to ensure all people can access independent advice and representation, and fearless specialist advocacy, regardless of popularity, belief, fear or favour.

NSW barristers owe their paramount duty to the administration of justice. Our members also owe duties to the Courts, clients, and colleagues.

The Association serves our members and the public by advocating to government, the Courts, the media and community to develop laws and policies that promote the Rule of Law, the public good, the administration of and access to justice.

The New South Wales Bar Association

The Association is a voluntary professional association comprised of more than 2,400 barristers who principally practice in NSW. We also include amongst our members Judges, academics, and retired practitioners and Judges. Under our Constitution, the Association is committed to the administration of justice, making recommendations on legislation, law reform and the business and procedure of Courts, and ensuring the benefits of the administration of justice are reasonably and equally available to all members of the community.

This Submission is informed by the insight and expertise of the Association's members, including its Human Rights and Innovation and Technology Committees. If you would like any further information regarding this submission, our contact is the Association's Director of Policy and Public Affairs, Elizabeth Pearson, on 02 9232 4055 or at epearson@nswbar.asn.au at first instance.

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A. Executive Summary

1. The New South Wales Bar Association (**the Association**) thanks the Australian Human Rights Commission (**the Commission**) for the opportunity to provide comments concerning the *Discussion Paper – Human Rights and Technology* (**the Discussion Paper**).

2. The Association supports many of the proposals identified by the Commission in the Discussion Paper.

3. In this submission the Association has focused in particular on proposals in the Discussion Paper that concern the likely impact of Artificial Intelligence (**AI**) on human rights in general, namely Question A and Proposals 3, 5, 7, 8 and 10. These are considered in turn below.

4. In addition, the Association considers that the Commission is now uniquely placed through this inquiry to consider the impacts of technology upon human rights through the lived experience of the COVID-19 pandemic, which could not have been anticipated or envisaged when the Discussion Paper was prepared. The Association suggests that in examining and furthering the proposals identified particularly in Parts A and D of the Discussion Paper, consideration should be should appropriately be extended to include experiences during and learnings from the COVID-19 pandemic.

5. During a very short space of time, the pandemic has prompted in many sectors an unprecedented reliance on technology, including online platforms and videoconferencing, to ensure the continued delivery of work and services where face to face interaction is not possible due to Government public health restrictions. This has given rise to old and new questions concerning privacy, the Rule of Law, human rights, equality and accessibility, including in the context of Australia's justice system, the operations of the courts and the role of the legal profession.

6. As articulated by the Australian Human Rights Commissioner in the foreword to the Discussion Paper, the challenge is using and regulating technology in such a way that "helps us seize the new economic and other opportunities, while guarding against the very real threats to equality and human rights".[1] Accordingly, to assist the Commission, the Association has detailed some of these issues and concerns below in section D.

[1] Discussion Paper, 7.

B. Impact of AI on Human Rights generally

a) Question A

7. Question A posed by the Commission in its Discussion Paper asks whether its definition of "AI-informed decision making" is appropriate for the purposes of regulation to protect human rights and other key goals.

8. The Association acknowledges that many AI-informed decisions that affect Australians may not affect them legally or substantially. Accordingly, the Association considers it appropriate that the regulation of AI-informed decisions be limited in some way.

9. As with other commentators, the Association agrees that the use of the term "AI" is inherently imprecise. The diverse techniques which might be referred to as "AI" give rise to different implications and risks. The use of the omnibus term "AI" might obscure, rather than reveal, policy challenges and appropriate responses. In this submission, the Association includes within "AI" reference to any use or application of algorithmic techniques (including "traditional" pre-programmed logic).

10. The Association's preference would be for a parallel policy discussion that uses as its lens "information". This is because it is the widespread availability of information in digital form that arguably creates the policy challenges considered under the rubric "AI".

11. The Association therefore agrees with the first limb of the definition that decisions must have "…a legal effect, or similar significant effect, for an individual". This threshold test is similar to that contained in the definition of AI-informed decisions for the purposes of article 22 of the General Data Protection Regulation in the European Union (incorporated into English law by the *Data Protection Act 2018* (UK) section 97).[2] The Association would, however, emphasise the importance of ensuring that any such limitation is construed broadly enough so as to encompass any decision that affects human rights. As Australia has not implemented human rights legislation at a Commonwealth level, or in many States and Territories, the definition may not be interpreted as broadly as in the UK or European Union. Consideration could also be given to the concept of affectation of a right or interest used in administrative law.[3]

12. The word "individual" is not defined in the Discussion Paper. The Association suggests this term should not be narrowly defined to only natural persons but in this context should be extended to a broader scope of personality. For example, during the COVID-19 pandemic, processing of JobSeeker applications for small businesses or partnerships may be decided in part by an electronic process. Although the theory and application of human rights laws are directed to the rights of natural persons, the Association considers it is important that due concern also be given to any decision informed by AI that determines the legal rights of any person, natural or otherwise.

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[2] Discussion Paper, 62 [5.3(a)].

[3] See *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.

13. In relation to the second limb of the definition, the Association notes the Commission's consideration that decisions that are "AI-informed" are those decisions "materially assisted by the use of AI".[4]

14. The Association suggests that depending on how this definition is construed, it is not clear if it would include decisions where an AI-input forms only a small part of a decision making *process* but disproportionately affects what decision is made.[5]

15. The Association notes the Commission's reference to the definition of "decision making" used by the Australian Council of Learned Academies (**ACOLA**) in its 2019 report, *The Effective and Ethical Development of Artificial Intelligence*,[6] being "decision making assisted by AI techniques". The Association considers ACOLA's definition – which omits the word "materially" – to be appropriate, particularly as the first limb of the Commission's proposed definition of AI-informed decision making would act as a materiality threshold, limiting the operation of any regulation to decisions that have a "legal effect, or similar significant effect, on an individual".

b) Proposal 3

16. The Association agrees with Proposal 3 that the Commission be engaged to conduct an inquiry into the accountability of AI-informed decision making, including consideration of reform needed to protect the principle of legality, the Rule of Law and human rights.

17. In Chapter 6 of the Discussion Paper the Commission touches on many of the issues that the Association considers to be important, arising from AI-informed decision making.

18. The Association agrees it is difficult, if not impossible, to overstate the impact AI is having economically, socially, and politically,[7] and that the impact of AI on human rights is profound and growing.[8] Much is unknown about AI, and the general public's understanding of AI is low. Many Australians may have little awareness of when AI is deployed in decisions affecting them. Even when they are aware, in many cases they do not understand how the AI was deployed and how it affected the decision made.

19. As the Commission noted, Justice Melissa Perry has previously identified legality and the Rule of Law as increasingly important issues arising out of the use of AI in executive decision making in Australia.[9] There remain outstanding issues in many areas of executive power as to whether or not the law even authorises the utilisation of AI at all.[10] Clarification of the lawfulness of the use of AI in administrative decision making is a matter that requires immediate consideration.

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4 Discussion Paper, 62 [5.3(b)].

5 The Association notes the consideration of this issue, at least in part, at Discussion Paper, 62 [5.3(b)(ii)].

6 Discussion Paper, 62 [5.3(b)]; see also the ACOLA report here <https://acola.org/hs4-artificial-intelligence-australia/>.

7 Discussion Paper, 59 [5.1].

8 Discussion Paper, 71 [5.6(a)].

9 Justice Melissa Perry, 'iDecide: Administrative Decision-Making in the Digital World' (2017) 91(1) *Australian Law Journal* 29.

10 Ibid, 31.

20. The Association recommends that any new inquiry also consider whether current anti-discrimination laws at the federal, state and territory levels will continue to be effective in detecting or preventing discrimination arising from the deployment of AI technologies.[11]

21. Equality and freedom from discrimination are key human rights, recognised in the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. Article 26 of the International Covenant on Civil and Political Rights requires that state parties guarantee to all persons equal and effective protection against discrimination on any ground.

22. An emerging problem for globally deployed platforms is the extent to which it is possible for local regulators to ensure local accountability or compliance with national norms. The effectiveness of anti-discrimination laws need to take into account this international dimension.

c) Proposal 5 and 7

23. Proposal 5 recommends legislation to ensure that individuals are informed when AI is materially used in a decision that has a legal, or similarly significant, effect on the individual's rights.

24. Proposal 7 recommends that the Australian Government should introduce legislation regarding the "explainability of AI-informed decision making",[12] and that the explanation should contain the reasons for the decision, such that it would enable an individual, or a person with relevant technical expertise, to understand the basis of the decision and any grounds on which it could be challenged.

25. Under Proposal 7 the recommended legislation should ensure that if AI is used, an individual can demand a non-technical explanation of the AI-informed decision, which would be comprehensible by a lay person, and a technical explanation of the AI-informed decision that can be assessed and validated by a person with relevant technical expertise.

26. The Commission appears to intend that Proposal 5 apply to both government and non-government decisions.[13] The Association believes that the application of Proposal 5 to both public and private bodies is appropriate.

27. The Association notes that it is not clear whether the Commission recommends Proposal 7 apply to both government decisions and non-government decisions. The Association agrees with the proposal as it applies to government decisions but suggests further consideration be given to its application on a wider basis. This may require a review by the Commission of the current state of the law as it relates to private actions and consumer protections, including under legislation such as the Australian Consumer Law. While the Association supports Proposal 7 in principle as it might apply to non-government entities, it suggests that some consideration should be given to the burden this may place on smaller entities who rely on AI.

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[11] Discussion Paper, 78 [6.3(a)(i)].
[12] Discussion Paper, 9.
[13] Discussion Paper, 93.

28. In Australia there is no general obligation to provide reasons in relation to a government decision that affects a person.[14] However, it is generally accepted that the provision of reasons is an important aspect of the right to natural justice. As the Commission noted, individuals can request reasons for most types of administrative decisions and in many circumstances the government must provide reasons when communicating a decision. The Commonwealth Ombudsman can also recommend that a government agency give reasons, or better reasons, in relation to an action the agency has taken.[15]

29. The principle of "explainability" is particularly important in government decision making with respect to AI. The Association notes the two obstacles identified by the Commission in relation to explaining AI decisions.

30. The first is that revealing AI-related information could also reveal commercially sensitive information. The Commission noted that the owner of an AI-informed decision making system, or a third-party developer, might object to revealing information about the system's operation (including any algorithms that the system uses) because it would reveal proprietary information. The Association agrees that in some cases this might be the case but such circumstances could be dealt with on their merits and could be appropriately dealt with through exemptions for particular forms of data such as confidential/private or commercially sensitive information,[16] or through the availability to the court of discretions to refuse relief.

31. Section 35 of the *Administrative Appeals Tribunal Act 1975* (Cth) is one example of legislation that entitles a Tribunal to prohibit or restrict the publication of information. Rule 33.9 of the Uniform Civil Procedure Rules 2005 (NSW) also entitles a person to make an application for restricted access to subpoenaed information where that information is confidential or commercially sensitive. While these types of exceptions could apply, the Association suggests they would need to be appropriately worded so as to ensure applicants are unable to thwart the requirement for explicability by relying on the commerciality of the algorithms or other data that inform the AI.

32. The second obstacle was whether there might be a technical reason why the system's use of AI cannot be explained. The Commission referred to an example of AI engaged in unsupervised learning where it was impossible to assess outputs for accuracy or reliability.[17] The Association submits that if AI is to be used in government decision making, it must be explainable to the lay-public if the decision affects an individual's legal rights, or affects an individual in some other substantial way. In any other case, it should not be used.

33. The Association nevertheless acknowledges that there may be some circumstances where this is not possible. Again, these may be able to be dealt with through exceptions under which the

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[14] See *Public Service Board of NSW v Osmond* (1985) 159 CLR 656.

[15] Discussion Paper, 82-3 [6.5].

[16] Such exemptions are contained within, for instance, both Part IV of the *Freedom of Information Act 1982* (Cth) and Australian Privacy Principle 12.3 of the *Privacy Act 1988* (Cth).

[17] Discussion Paper, 84 [6.5(a)].

relevant decision maker would need to provide cogent evidence as to why a proper explanation cannot be given.

34. The Association notes that the requirement of explainability should not necessarily require of a decision-maker an overly expansive explanation of the theoretical or technological foundations for the AI. The Association submits that the decision must, at least, be explainable so that the individual understands where in the decision making process the AI was utilised and what role the AI played. This should not be an onerous task. A decision maker will presumably have already invested considerable time in developing the AI technology or incorporating it into the decision making process. Requiring the decision maker to be able to explain that involvement in an easily digested format could not be considered overly burdensome, nor is it a requirement inimical to Australian law.

35. As noted above, while the Association supports Proposal 7 in principle as it might apply to non-government entities, it suggests that further consideration should be given as to how implementation of such a principle might operate in practice and what – if any – burden this might place on private entities.

d) Proposal 8

36. In Proposal 8, the Commission recommends that where an AI-informed decision making system does not produce reasonable explanations for its decisions, that system should not be deployed in any context where decisions could infringe the human rights of individuals.

37. The Association agrees with this proposal and has addressed its substance, in part, above. In circumstances where a government decision involving AI affects a person's legal rights or interests, or has some other similarly significant effect, that person must be entitled to information which allows them to understand how AI was used in the decision. If a decision-maker is unable to provide reasonable explanations, then the AI should not be utilised.

38. Principles of Australian administrative law around unreasonableness, including arbitrary, irrational, or illogical decision making, and the absence of evidence and intelligible justification, depend on the quality of the reasons provided. In Australian law, if there is a statutory obligation to provide reasons, a decision maker that inadequately discharges that obligation will have committed an error of law. A claimant may be entitled to a writ in the nature of certiorari or mandamus. Whether the decision maker decides to make the decision again, or if they are required to provide reasons, it will in either case be necessary for a decision maker to describe adequately the decision making process. As such, the deployment of AI-informed decision making that a government decision maker is unable to explain is likely to be, in many cases, unlawful.

39. It is not far-fetched, therefore, to require a decision maker behind an AI-informed decision to provide a clear explanation for the AI and, if they are unable to do so, to make it mandatory that the AI not be used. Certain exceptions to this general rule may be necessary and the Association suggests that this may be a matter for further inquiry by the Commission.

40. As with the proposal above, while the Association supports Proposal 8 in principle as it might apply to government entities, the Association suggests that further consideration should be given to how such a principle might be implemented in practice and what burdens this might place on private entities.

e) Proposal 10

41. Proposal 10 recommends that the Australian Government should legislate a rebuttable presumption that the legal person who deploys an AI-informed decision making system is legally liable for the use of the system. Related to Proposal 10, the Commission asks in Question B whether, in circumstances where a person who is responsible for an AI-informed decision does not provide a reasonable explanation for that decision, Australian law should impose a rebuttable presumption that the decision was not lawfully made.

42. The Commission notes in the Discussion Paper that some stakeholders had suggested reforms relating to federal anti-discrimination and privacy law. Stakeholders suggested that while the evidentiary onus often rests on an individual claiming discrimination or seeking to challenge an automated decision, this onus should shift to those deploying an AI-informed decision making system, particularly where the decision making process is opaque.[18]

43. The Association agrees with Proposal 10 but suggests that further consideration be given to liability for the use of AI systems. This might be something formulated through proposal 19 to create an AI Safety Commissioner.

f) Proposal 11

44. The Association supports the introduction of a legal moratorium on decision making using facial recognition until further work is done to better understand the implications for human rights in its principled use and the contexts in which it might be deployed. A valid means by which this might be articulated is through the work of the proposed AI Safety Commissioner (proposal 19).

g) Proposals 13 and 19

45. The Association agrees that there should be an independent statutory office given responsibility for:

    (a) building regulatory capacity;

    (b) providing oversight over the existing and emerging challenges of AI; and

    (c) formulating and evaluating appropriate ethical and legal frameworks.

46. An additional benefit of this office might be to assist in establishing norms which might then be available to those using AI to remain compliant and minimise harmful effects. It would also assist in building trust and articulating the public's expectation that AI does not become a means

[18] Discussion Paper, 77 [6.3].

by which a person's human rights are adversely affected. Once established, consideration could also be given to providing the statutory office with an enforcement power for the established norms.

47. The Association agrees that a certification system of the kind considered by Proposal 13 might help raise the bar in a practical way to ensure that new systems respect and reflect human rights standards and are developed through negotiations with appropriate stakeholders, in order to build trust and reduce the complexity for new entrants to be compliant.

C. Technology and COVID-19

48. The COVID-19 pandemic has undoubtedly changed the fabric of our society and the practice of many industries and professions, requiring flexibility and innovation from governments, businesses and courts alike in order to adapt to unprecedented challenges.

49. The pandemic has necessitated the adoption of new technologies, and the evolution of new usages for old technologies, in workplaces and systems that have previously relied on in person interactions for various reasons. It has also prompted lawmakers and the courts to consider and be very clear in policies and protocols about when the use of technology may not be appropriate or in the interests of justice as a substitute for in-person interactions.

50. It is important now more than ever that proper scrutiny, regulation, oversight and continued monitoring of these technologies is maintained in order to protect human rights, the Rule of Law and access to justice.

51. Although COVID-19 was not in the contemplation of the Commission when the Discussion Paper was drafted, the Association considers that many of the issues raised in the Discussion Paper resonate with the challenges and policy issues facing the community, parliaments and the courts during this global public health crisis.

52. The Australian community and justice system are currently experiencing a greater reliance upon technology to continue operations where possible during the pandemic. This greater use and dependence on technology must be accompanied by legislation that is fit for purpose, as well as scrutiny and interrogation of the impact and implications of technology on human rights, the legal system, access to and the administration of justice.

53. The impacts of the COVID-19 pandemic illustrate the utility of developing a *National Strategy on New and Emerging Technologies*, as suggested by the Commission at Proposal 1, and assessing the efficacy of existing ethical and normative frameworks to preserve, promote and improve human rights protections, as outlined in Proposal 2. These actions could lead to the development of tools and paradigms to better assist policy makers and legislators to respond to challenges like the pandemic moving forward. In particular, these could assist with balancing interests to the extent these might come into conflict, such as balancing the paramount need to protect the community's health and safety with not impermissibly infringing upon individuals' rights to privacy, freedom of movement and other rights, and other economic considerations and rights.

54. This section outlines, by way of example, some of the impacts of the COVID-19 pandemic on technological engagement by the community and the justice system, and issues arising as a result.

The Community

55. The use of technology has significantly increased during the COVID-19 pandemic, with people using a variety of technologies to facilitate working from home and staying socially connected while physically distancing. The Government is also seeking to use technology to engage with

the public in different ways, including through the Australian Government's COVID-19 WhatsApp communications and the COVIDSafe app.

56. Although there is greater use of and exposure to technology, there has not necessarily been a corresponding increase in knowledge or public information about the impacts of technology or its implications, including on the right to privacy.

57. This is due, in part, to the speed at which the community has been forced to adapt to new COVID-19 social distancing policies, as technology was quickly utilised without always being accompanied by information on the implications that increased technological use would have on privacy or human rights. The Australian community is no stranger to technology, however, as discussed above in response to Proposal 3, the general public's understanding of AI is low. Consequently, there is a need to inform the public as to how technology and AI may be used to impact decisions relating to them, and how this may impact upon their privacy.

The Justice System

58. Historically, Australia's justice system has relied significantly on person to person interactions in many respects. These include the physical appearance of counsel in Court, the physical attendance of witnesses for cross-examination, the physical presence of a jury during a trial, the physical presence of the parties to the court proceedings and in accordance with the principle of open justice and open courtrooms, the ability of members of the public and the media to attend hearings and observe in person justice being done.

59. This face-to-face interaction is important for many reasons, including often as a safeguard to promote the administration of justice by promoting the integrity of the evidence and minimising the ability of others to interfere with or influence due process or persons involved in a matter. For example, to ensure that oral evidence provided by a witness or the signing of a will, affidavit or other document is done without duress, coaching or influence from some other person present.

60. Courts and Tribunals have put in place measures to conduct proceedings without the need for physical attendance where possible and appropriate, to respond to the developing COVID-19 pandemic. They have also recognised that in some circumstances this is just not possible or desirable, for example, in the case of jury trials. Some legislative change has been required to ensure the justice system possesses the requisite flexibility to handle alternate arrangements and continue where the interests of justice can be observed by doing so during this pandemic.[19] The justice system and those who work in it are an essential service during this time of crisis, and their continuity of operations is crucial.

61. However, where person to person interactions are temporarily replaced with virtual interactions or videoconferencing, appropriate safeguards must be put in place to ensure that the purpose and the integrity of that interaction, and the rights of individuals involved in those legal matters or proceedings, are not compromised.

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[19] See, eg, *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW).

62. Tools or frameworks, such as those proposed by the Commission, would be most useful to policy makers, the courts and the profession if these considered approaches to assessing the practical applications and impacts of technologies upon human rights are to progress, rather than simply articulating principles.

63. Courts and alternative dispute practitioners have increasingly relied upon conducting some processes, where appropriate and in the interests of justice to do so, through online platforms, including Zoom and Microsoft Teams. However, the reality is that this public health crisis has prompted the justice system to seek to appropriate technologies originally built for other purposes, such as facilitating collaborative team work or meetings in corporate settings, as a stop-gap solution to allow them to continue to operate to the greatest extent possible. This presents challenges and carries risks that should be carefully scrutinised.

64. Due to the sensitive and sometimes confidential nature of trials and court proceedings, there must be continued assurances that these platforms are secure, appropriate for and maintain the dignity of a court environment.

65. As there is a greater reliance on technology because of COVID-19, there is also a greater need for regulation and the monitoring of this technology to ensure that vulnerable individuals are protected. This is important for example when audio visual technology is used for witnesses to give evidence, as there may be is room for this function to be abused by individuals to manipulate witnesses off-camera or by the witnesses themselves to have prompts on the screen. Observers may also be able to screenshot and share images from inside the virtual courtroom, despite this being banned under the *Court Security Act 2005* (NSW).

66. Similarly, on 22 April the Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 (NSW) was made to allow documents such as wills, affidavits and statutory declarations to be witnessed via audio visual link. Providing continuity in the service of witnessing important documents is extremely important to both the community and justice system during the COVID-19 pandemic. Allowing individuals and businesses to continue to be able to manage their affairs during this time of uncertainty provides some comfort and stability. Similarly, the courts are an essential service and allowing the witnessing of key documents facilitates the continued operation of the justice system, promoting the administration of and access to justice. The Association appreciates that in order to facilitate this continuity, some change may be required to ensure the justice system possesses the requisite flexibility to allow alternate arrangements where meeting a signatory in person is not possible. The Association appreciates the exigencies of the COVID-19 situation, however any change, even in the short-term must be balanced by careful safeguards to prevent these provisions from being abused or from resulting in unintended consequences, especially for already vulnerable members of our community.

67. Great caution must be taken in relation to any changes, even if only temporary, to witnessing enduring powers of attorney, appointments of enduring guardian and wills to ensure that safeguards against duress, coercion and undue influence are not inadvertently undermined. The law as it currently stands seeks to protect the vulnerable from fraud, forgery or undue pressure

being brought to bear upon them. The requirements that particular documents be prepared or signed in person, under oath and in the presence of witnesses are important protections for the vulnerable. These must be carefully considered, and other safeguards adapted where technology is to be used.

68. Unfortunately, there will be members of the community who for various reasons may not be able to access adequate technology or software in order to take advantage of the proposed altered electronic arrangements or participate in court matters via videolink. They include disadvantaged and marginalised individuals, those in rural, regional or remote areas, the elderly and the homeless. In such cases, suitable alternatives should be considered and made available to enable vulnerable people to access legal services and exercise their rights as and when required, with appropriate social distancing measures.

69. With the increased use of technology also comes increased risks, both predictable and unpredictable. As the relationships between communities, the justice system and technology are all changing due to COVID-19, so too are the implications that technology has for human rights and access to justice issues. It is imperative that these implications are fleshed-out and fully understood in order to ensure that individuals and communities are properly protected during this time of rapidly increasing interaction with technology.

70. The Association considers that the Commission, and the public discourse flowing from the Discussion Paper, have a critical role to play in this area, and in equipping governments, courts and the community to continue to face and handle such challenges moving forward.

71. Consideration should also be given by the Commission to the role that State and/or Commonwealth Bills of Rights might play in bringing greater clarity to further discussions about the role of technology and in responding to or legislating during crises such as the COVID-19 pandemic.

72. Accordingly, the Association encourages the Commission to carefully consider issues arising from technological engagement and evolution during COVID-19 and how the Commission's proposals including Proposal 1 and 2 might assist with these and like challenges in future.

D. Other Issues

73. The Association notes there are many other issues that have not been addressed in this submission, notably the impact of technology on the right to privacy. The Association at this time has no comment to make on reform in this area save to indicate its in principle support for the proposal by the Australian Law Reform Commission that a statutory cause of action for serious invasion of privacy should be enacted.

74. Thank you again for the opportunity for the Association to make submissions concerning these important matters. If the Association can be of any further assistance to the Commission, please contact the Association's Director of Policy and Public Affairs, Elizabeth Pearson, on 02 9232 4055 or at epearson@nswbar.asn.au in the first instance.