Basic Rights Queensland Inc.
WORKING WOMEN QUEENSLAND

GPO Box 496
Brisbane QLD 4001
P: 1800 621 458
www.brq.org.au
ABN 67 563 668 353

House of Representatives Standing Committee on Employment, Education and Training
PO Box 6021
Parliament House
CANBERRA
Canberra ACT 2600

via email: ee.reps@aph.gov.au

Submission to the Inquiry into the Digital Transformation of Workplaces

INTRODUCTION

1. Basic Rights Queensland welcomes the opportunity to make this submission to the House of Representatives Standing Committee on Employment, Education and Training.

2. Basic Rights Queensland (BRQ) is an incorporated not-for-profit organisation and community legal centre. BRQ provides free information, advice, advocacy and legal services to Queenslanders. BRQ supports vulnerable, marginalised and disadvantaged people in relation to social security, disability and employment law and offers a specialised service for people with mental health concerns.

3. Working Women Queensland (WWQ) is a part of BRQ. WWQ provides free legal and industrial advice, information, support and representation to vulnerable, non-unionised workers about their rights at work. We provide community education, policy advocacy and workplace training. We predominately service people identifying as women and we are experts in gender-based workplace issues.

4. This submission is centred on the lived experience of WWQ clients. A selection of de-identified stories from WWQ casework, along with our recent research, informs the discussion in key areas of WWQ's advocacy including:
    a. Sexual harassment
    b. Pregnancy discrimination
    c. Data breaches
    d. Workplace surveillance and performance monitoring
    e. Intersectional considerations
    f. Job replacement

5. This submission draws on ongoing research that WWQ is conducting with the pro bono support of Wotton + Kearney, looking at the impact of Artificial Intelligence technology (**AI**) on women's work and so is primarily focused on the impact of AI rather than other forms of digital technology.

6. What is commonly termed 'AI' refers to 'generative models' which use machine learning systems to perform specified tasks. A well-known example is ChatGPT, a *large language model* (**LLM***)* which can generate text or other data in response to prompts provided by human users. These LLMs are 'trained' to learn patterns and structure using input training data, and then generate new data with similar characteristics. Other models, like DALL-E, generate images from text prompts (by combining data scraped from catalogued pieces of art). The use cases for AI, or rather 'generative models', therefore include tasks which are capable of automation.

7. Automated decision-making and machine-learning systems have the potential to reinforce and exacerbate existing power imbalances, gender inequality, discrimination and bias, social and economic disadvantage, and create new mechanisms for harassment in the workplace. These technologies, however, may provide us with tools to address these risks and innovations that greatly improve the lives of working women.

8. Our discussion of our WWQ case studies illustrate the potential impact of AI developments on the client cohorts in whose interests we advocate, for better or worse, and considers some of the measures needed to shape this future for the better.

9. In general, the risks we identify and the approaches to addressing these risks resonate with those set out in the Australian Government's interim response and recommendations following the Safe and Responsible AI in Australia consultation which explains, for example:

> *"In a risk-based regulatory framework, AI development and application is subject to regulatory requirements commensurate to the level of risk they pose. A risk-based approach allows low-risk AI development and application to operate freely while targeting regulatory requirements for AI development and application with a higher risk of harm."*[1]

10. Economic security is fundamental to the enjoyment of other human rights. Given the impact of employment on economic security, it may seem obvious that recruitment systems used to determine access to employment have been specifically included as high-risk in the European Union's proposed Artificial Intelligence Act. However, we recognise the unique barriers that women face and the exclusion of women's data and interests from the decision-making tables where products, innovations, and services have been designed – from crash test dummies based on male bodies, to insurance policies designed without consideration of gender-based violence.

11. WWQ is making this submission to ensure appropriate consideration is given to what constitutes 'high risk' for working women when decisions are made about how to regulate the risks posed by AI in the workplace.

[1] Department of Industry, Science and Resources (Cth), *Safe and responsible AI in Australia consultation: Australian Government's interim response* (Interim Response, 17 January 2024) 13.

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RECOMMENDATIONS

Regulation

12. WWQ supports recommendations for Australia's AI Regulatory Strategy made by the Human Technology Institute including: to generally adopt a technology-neutral approach that can adapt to change, to adopt a risk-based approach, and to establish consultative mechanisms to support ongoing engagement with stakeholders including civil society, industry, and technical experts.[2]

13. However, we know that regulation on its own will not be enough to safeguard the rights of the women in whose interests we advocate. Through the case studies below we see how these women have only been able to access the protection of existing employment and discrimination law with the assistance of WWQ advocacy. How much more difficult will it be to assert rights under discrimination law if the discrimination is automated through a machine using an algorithm? Or to challenge unfair dismissal where performance is measured through hidden AI algorithm codes?

Upskill civil society

14. WWQ and other civil society organisations need support to upskill in the use of new technology to be able to provide the expert input required for decision-makers to understand the impact of new technologies on various groups in society – particularly those most marginalised.

15. Women are over-represented in the community and human rights sector and caring professions who are consulted to ensure that the impact on various groups in the community is understood, yet women are under-represented in STEM.

Diversity in STEM

16. The underrepresentation of women in STEM, including AI, stems from entrenched gender norms starting as early as age 6, limiting career aspirations by age 8, and solidifying gender stereotypes by age 13. This underrepresentation is reflected in the percentage of men and women studying in STEM disciplines. 72% of people studying information technology are male and 28% are women. The contrast is starker in engineering and related fields with 90% of men and 10% of women seeking qualifications in those fields.

17. The lack of diversity in technology-related roles inhibits women's influence on technologies shaping their lives. Strategies to increase participation include incentivising technology subjects, improving diversity data, and supporting women-led STEM initiatives with stable funding. Addressing these issues is crucial for enhancing future opportunities for girls in STEM and beyond.

Human rights and a culture of respect

18. More broadly, efforts to develop a stronger culture of human rights are even more critical in the context of rapid technological change. From the perspective of WWQ, the success of any regulatory strategy for AI

[2] Human Technology Institute, UTS, Submission No 476 to Department of Industry, Science and Resources (Cth), *Safe and responsible AI discussion paper* (9 August 2023) 4.

relies on public and institutional awareness and support for gender equality as a vital element of valuing human respect and dignity, and investment in education is required to achieve this.

Equal access to AI tools in the workplace and training to use them

19. Measures ensuring equal access to AI and other technology-based enhancements to work performance and productivity are just as important as regulating to protect against the potential risks. Whether it's access to childcare robots, or access to performance enhancing smart glasses or neurotechnology headsets, the cost of these enhancements may greatly increase the digital divide.

20. We already see how the existing digital divide impacts people who are locked out of participation in life's basic necessities, like accessing bank accounts or government services. Digital literacy and inclusion remains a challenge for people who are most marginalised in Australia, necessitating an intersectional response. We know that women are often less likely to be able to access training and upskilling opportunities, and this exclusion is greater for women from culturally and linguistically diverse backgrounds, women with a disability, women in remote areas and older women, to name a few.

Oversight

21. WWQ supports the recommendation that the Australian Government should establish an 'AI Commissioner' to provide independent expert advice to government and regulators, and to provide guidance on law and ethics for industry, civil society, and academia.

22. The remit of such a Commissioner should include monitoring AI developments through a gender equality lens.

23. Strong and effective regulators are essential to ensure the proper enforcement of existing laws that protect the rights of women in the workplace – whether employment, discrimination, privacy or other legislation – in the face of new technology. Strong civil society organisations supported by evidence-based research are essential to hold government and employers to account.

CASE STUDIES

The following de-identified case studies have been selected from WWQ's casework to illustrate how the issues which currently exist for women in the workplace could soon be impacted by the rapid digitisation of workplaces, especially AI. For each of these case studies, we ask: How can generative AI benefit working women? And how can it harm them?

From this discussion, we draw out the themes we have set out in our recommendations.

CASE STUDIES - SEXUAL HARASSMENT

Case Study – Layla*

Layla worked in a senior professional role in financial services for eighteen months when a fellow colleague began engaging in unwelcomed behaviours that made Layla highly uncomfortable. When she asked the perpetrator, to stop trying to talk to her in the manner he had, and to stopping trying to touch her, he indicated that it was a misunderstanding, and she was only interpreting his actions in this way because of her culture.

Layla is a culturally and linguistically diverse woman. Strongly refuting his explanation, Layla formalised a complaint with her employer. At the request of the employer, an external HR organisation arranged and facilitated a mediation. Layla indicated that she was very uncomfortable with this process.

Case Study – Denise

At a work Christmas party Denise was groped by a colleague on the dancefloor. Shocked and distressed, Denise went to the toilets and cried. After composing herself, she confronted the colleague and told him, “What you did want unacceptable, keep your hands off me.” He denied the behaviour and acted aggressively towards Denise.

Denise reported the behaviour because she was concerned about her safety at work due to the initial conduct and the response when she confronted the perpetrator. She also made a complaint. While the employer took steps to try to make a safer workplace for Denise, both the employer and Denise agreed that they were unable to provide her with a safe workplace, given what had occurred.

WWQ provided Denise with a range of options and the support to self-advocate to negotiate an exit from the workplace. With the assistance of WWQ, a substantial separation payment was made to Denise and the matter was resolved within 6 weeks.

Case Study – Mei

Mei was referred to WWQ, seeking advice in relation to her experiences of workplace sexual harassment. Shortly after commencing employment, Mei experienced harassment from her manager. Mei made a complaint to her employer who was dismissive and ignored her complaint. Following her complaint, Mei lost work and suffered financial hardship as a result.

Given her dire financial situation Mei was seeking a resolution as swiftly as possible. Following information and advice from WWQ, she chose to lodge a complaint with the Queensland Human Rights Commission (**QHRC**). WWQ submitted that the matter should be dealt with as a priority, this was accepted, and the matter was listed for conciliation within two months of lodgement.

It is important to note that two months was the *expedited* waiting period, and Mei’s health was significantly impacted by the situation. A protracted period waiting for the matter to be listed would have impacted on Mei considerably and further compound her trauma and financial disadvantage.

Additionally, WWQ assisted Mei with referrals to other community organisations for assistance. This included local sexual assault counselling services which were made accessible to her, noting that Mei had no access to Medicare and was required to self-fund any medical and health treatment.

The translation services sought by WWQ to assist Mei were invaluable in ensuring Mei was able to access legal advice during a time of personal and financial distress and isolation. It was important that legal advice and support were provided in her own language.

*names have been changed for confidentiality.

WWQ represented Mei at the conciliation and the matter was settled. Mei received a significant financial sum, the employer agreed to implement a workplace sexual harassment policy, and the manager and employer had to complete mandatory sexual harassment training delivered by the QHRC.

DISCUSSION – SEXUAL HARASSMENT

The case studies of Layla, Denise and Mei illustrate the difficulty that many WWQ clients face when alleging sexual harassment. Allegations of sexual harassment have endemic evidentiary issues. Employers may have institutional or entrenched prejudices about sexual harassment, resulting in unfairly dismissive attitudes or seeing the victim-survivor as the problem. In Layla's case, the perpetrator indicated that it was Layla who misunderstood his behaviour, and she was only interpreting his actions in this way because of her culture. In Denise's case, he denied the behaviour and acted aggressively towards her. In Mei's case the employer was dismissive and ignored her complaint.

Sexual harassment detection tools

AI powered tools that can detect sexual harassment and provide those experiencing sexual harassment with tailored information about how to respond and where to find support could be a positive development.

The 2022 United Nations Educational, Scientific and Cultural Organization, Organisation for Economic Co-operation and Development, and Inter-American Development Bank report, The Effects of AI on the Working Lives of Women (*UNESCO, OECD, IBD report*)[3] provides several examples of these tools including:

- '#MeTooMaastricht, a chatbot to assist people coming forward to report their harassment experiences,' developed by a group of academics at Maastricht University in the Netherlands;[4]
- '#MeTooBots to monitor and flag communications between colleagues, and detect bullying and sexual harassment in company documents, emails and chat' developed by AI firm NexLP;[5]
- 'Companies such as Gfycat use AI to combat harassment from deepfakes by searching for similar images across the web to detect altered ones;'[6]
- 'Brazil-based Think Eva is designed to track harassing emails, texts and comments;'[7]
- 'The Callisto and AllVoices apps allow people to report harassment;'[8]
- ELSA, 'a digital tool created by GenderLab and financed by the Inter-American Development Bank, currently in use in Bolivia, Colombia and Peru, which uses big data and AI to prevent sexual harassment in the workplace.'[9]

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[3] United Nations Educational, Scientific and Cultural Organization, Organisation for Economic Co-operation and Development, and Inter-American Development Bank, *The Effects of AI on the Working Lives of Women*, (Report, 8 March 2022) ('*UNESCO, OECD, IBD report'*).
[4] Ibid 57 referencing Yoav Shoham et al, *Artificial Intelligence Index 2018 Annual Report* (Annual Report, December 2018).
[5] Ibid 58 referencing Isabel Woodford, 'Rise of #MeTooBots: scientists develop AI to detect harassment in emails', *The Guardian* (online, 3 January 2020) <https://www.theguardian.com/technology/2020/jan/03/metoobots-scientists-develop-ai-detect-harassment>.
[6] Ibid 58.
[7] Ibid 58
[8] Ibid 58 referencing Sejuti Das, 'AI To Combat Sexual Harassment With Chatbots, Apps & Trained Algorithms' *Analytics India Magazine* (online, 6 January 2020) < https://analyticsindiamag.com/ai-to-combat-sexual-harassment-with-chatbots-apps-trained-algorithms/>.
[9] Ibid 58.

In Thailand, AI technology has been used to develop the Sis Bot: "*a chat bot that can provide 24/7 information services for survivors of violence, accessible through their mobile device or a computer. A woman facing domestic violence can for instance, message the Sis Bot via Facebook Messenger and it will immediately respond with information about how to report to the police, how to preserve evidence, and what support services or compensation they are entitled to by law*".[10]

Dr Jerry Spanakis, one of the academics leading the Maastricht University research, pointed out how this technology can address harassment in the workplace and beyond when interviewed for the UNESCO, OECD, IDB report:

> *Relevant authorities (municipality, university, support organisations, etc.) report that people are not eager to report their experiences for multiple reasons: they feel ashamed, they feel that nothing will happen if they do, or they just don't trust people anymore. Technology can play a role in increasing reporting: anonymous and accessible (via your phone) reporting can help people take the first step and report their experience. In workplaces, where authority and hierarchy pose extra complexity, such intelligent tools can serve as a first step towards tackling workplace harassment. Of course, there is a need for an ethical and legal framework around the deployment of such tools, and commitment from management as to (re)acting properly to the harassment cases.*[11]

AI systems could be used to monitor and record workplace behaviours in a way that could benefit employees like Layla, Denise, and Mei, beyond sexual harassment, such as detecting racist activity on social media and other online activity.[12]

Limitations and risks of sexual harassment detection tools

However, there are limitations to the kind of sexual harassment that AI enabled tools may be able to detect. In Layla's case of being touched inappropriately in private or Denise being groped on the dancefloor at the Christmas party, there will be challenges with designing sexual harassment detection tools that do not also represent an inappropriate invasion of privacy. Even with online forms of harassment, "people can learn to trick bots and game systems, or simply move to other ways of harassment".[13]

There are also risks involved in the widespread use of monitoring systems which can be misused (see the section below on workplace surveillance) and can reinforce existing gender power imbalances. A report by the Institute for Public Policy Research UK thinktank warned in 2023 that in the private sector, women are at higher risk of worker surveillance, with non-unionised women 52% more likely to face surveillance.[14]

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[10] UN Women, 'Using AI in accessing justice for survivors of violence', *UN Women* (Web Page, 30 May 2019) <https://www.unwomen.org/en/news/stories/2019/5/feature-using-ai-in-accessing-justice-for-survivors-of-violence>.
[11] *UNESCO, OECD, IBD report* (n 3) 57.
[12] Ibid 56 referencing Richard A. Bales and Katherine V.W. Stone, 'The Invisible Web at Work: Artificial Intelligence and Electronic Surveillance in the Workplace' (2019) 41(19) *Berkeley Journal of Employment and Labor Law* 1.
[13] Ibid 58.
[14] Dahaba Ali Hussen, '"Dystopian" surveillance "disproportionately targets young, female and minority workers"', *The Guardian* (online, 27 March 2023) < https://www.theguardian.com/global-development/2023/mar/26/dystopian-surveillance-disproportionately-targets-young-female-minority-workers-ippr-report>.

While new AI tools for monitoring workplace sexual harassment could be a welcome development for the cohorts that WWQ assist, such tools need to be researched and tested to avoid bias and unintended consequences before they are more widely introduced in workplaces.

Working from home - Responsibility for providing a safe workplace

For many women, the rapid digitisation of the workplace during the Covid-19 pandemic has brought positive aspects to greater flexibility in working arrangements, which includes the ability to work from home. However, as we can see from Denise's case, it may be an easier path for employers to have a complainant of sexual harassment working from home. In a sense, this makes safety the responsibility of the complainant, rather than the employer taking full responsibility for providing a safe workplace. In Layla's case, she was given no choice but to continue working with her alleged harasser.

Working from home also does not guarantee safety from harassment given the proliferation of online channels which provide new opportunities for sexual harassment.

Technology-facilitated sexual harassment

As the UNESCO, OECD, IDB report observes "[t]he move to more work online, combined with the increased importance of online platforms for workers' connections to jobs, co-workers, and visibility in their professions, makes for a potentially challenging combination, exposing women to more spaces for harassment and possibly with fewer recourses."[15]

In Australia, the Australia's National Research Organisation for Women's Safety (**ANROWS**) April 2024 research report, 'Workplace technology-facilitated sexual harassment: Perpetration, responses, and prevention,' (**ANROWS report**)[16] alarmingly reveals the extent of workplace-technology facilitated sexual harassment **(WTFSH**).

Broader than just AI, the ANROWS report defines WTFSH as "unwelcome and/or threatening sexual conduct using mobile, online and other digital technologies within a workplace context".[17]

Based on 20 in depth interviews with industry stakeholders, a national survey of 3,345 people and five online focus groups, the ANROWS research found that:

[15] *UNESCO, OECD, IBD report* (n 3) 57.
[16] Australia's National Research Organisation for Women's Safety, Workplace technology-facilitated sexual harassment: Perpetration, responses and prevention (Research Report, March 2024) ('*ANROWS report*').
[17] Ibid 15.

- 1 in 7 Australian adults surveyed report engaging in workplace technology-facilitated sexual harassment.[18]
- There are significant gendered patterns to the use of WTFSH.[19]
- Perpetrators are rarely held to account for their behaviour, with few individuals reporting they had used WTFSH facing formal reports or complaints.[20]
- Gender is a significant factor in the perpetration of WTFSH, with 24% of surveyed men acknowledging using technology to engage in workplace sexual harassment compared to 7% of women.[21]

The recent case where 50 girls from Bacchus Marsh Grammar were targeted with nude images created using AI and circulated online provides a shocking example of how deepfake technology could be used for workplace sexual harassment purposes.[22] Perpetrators can anonymously create 'deep-fake' (that is, artificially generated images) and circulate these fake images as a form of 'revenge pornography'. Australian E-Safety Commissioner, Julie Inman Grant warns that 'the development of innovations to help identify deepfakes is not yet keeping pace with the technology itself.'[23]

Limitations of regulatory responses to technology-facilitated sexual harassment

While the Australian Government introduced legislation earlier in the year to create new criminal offences to ban the sharing of non-consensual deepfake sexually explicit material,[24] the limitations of regulation and policies to tackle WTFSH are evident in the attempt to respond to this form of AI enabled abuse.

As observed by Natalie Brown: "It is often the case with sexual abuse and harassment, the path to justice for victims of deepfake pornography is also not an easy one. Not only does the costly, but time-consuming burden of legal recourse also fall on them; it's further complicated by the fact most people sharing abusive images online are doing so anonymously and can be harder to pin down."[25]

[18] Ibid 12.
[19] Ibid.
[20] Ibid 66.
[21] Ibid 44.
[22] Jordyn Beazley and Rafqa Touma, 'Bacchus Marsh Grammar: schoolboy arrested after 50 female students allegedly targeted in fake explicit AI photos scandal', *The Guardian* (online, 12 June 2024) <https://www.theguardian.com/australia-news/article/2024/jun/12/schoolboy-arrested-after-allegedly-posting-fake-explicit-images-of-female-students-ntwnfb>.
[23] eSafety Commissioner, 'Deepfake trends and challenges – position statement', *eSafety Commissioner* (Web Page, 23 January 2022) < https://www.esafety.gov.au/industry/tech-trends-and-challenges/deepfakes>.
[24] Natalie Brown, '"Harmful and degrading": Anthony Albanese announces ban on deepfake pornography', *news.com.au* (online, 1 May 2024) <https://www.news.com.au/lifestyle/real-life/news-life/harmful-and-degrading-anthony-albanese-announces-ban-on-deepfake-pornography/news-story/7a2a9d1f5b130c2ebf36860e808294c7> .
[25] Ibid.

Ultimately, AI-powered sexual harassment detection tools and legislation to criminalise forms of technology facilitated abuse will not be effective without cultural shifts in workplaces, and the community more broadly, to promote respect and gender equality.

The ANROWS report on WTFSH also found that sexist and gender discriminatory attitudes and the endorsement of sexual harassment myths are the two most common predictors of self-reported WTFSH perpetration, with 45% of people who reported engaging in WTFSH working in a male-dominated workplace.[26]

Efforts to increase diversity in workplaces may well be part of the solution, with reports of engaging in WTFSH being somewhat lower in workplaces with roughly equal numbers of men and women (39%) and much lower in workplaces with mostly women employees (16%).[27]

For our clients, like Layla, Denise, and Mei, cultural shifts in their organisations would hopefully lead their employers to take their exposure to sexual harassment seriously and design solutions that support safer workplaces whether online, AI-powered, or otherwise.

CASE STUDIES - PREGNANCY DISCRIMINATION

Case Study – Jean

Jean was pregnant and had previously miscarried. Employed part-time as a Youth Woker, Jean asked her employer to take the risks to her safety into consideration in relation to the volatile and sometimes dangerous nature of Youth Work given she had become pregnant.

Following this request, Jean found she was no longer being rostered for her guaranteed part-time hours. This impacted her financially. After being provided with medical advice and requests to be transferred to a safe job, her Employer responded, and indicated that no suitable role was available.

With WWQ's information and support, Jean was able to inform her employer of her entitlements, they indicated that they would seek legal advice in response. The next contact between Jean and her employer was a redundancy process offer. Jean was the only person being made redundant, and there was no offer of redundancy pay. The redundancy would make Jean ineligible for paid parental leave and no employment security after her child's birth.

Jean was supported by WWQ and filed an application in the Fair Work Commission.

Case Study – Charlotte

Charlotte had been headhunted by her employer for her role in the jewelry industry and had been employed for over 12 months prior to announcing her pregnancy. Shortly after, she was made redundant, making her ineligible to access paid parental leave entitlements. Charlotte believed she was made redundant due to her pregnancy.

Given the financial stress she found herself in Charlotte sought to pursue an avenue that would not be protracted by lengthy processes and wanted to finalise the matter as promptly as possible. Charlotte made an application to the FWC and participated in conciliation on the advice of WWQ, during which a settlement was reached.

[26] *ANROWS report* (n 15) 50.
[27] Ibid 12.

DISCUSSION - PREGNANCY DISCRIMINATION

Federal, state and territory anti-discrimination laws make it unlawful for an employer to discriminate against an employee on various grounds including sex, pregnancy, potential pregnancy, breastfeeding and family responsibilities. This applies to most employment relationships and across all stages of the employment relationship, from recruitment through to termination.

However, some employers like those in Jean and Charlotte's cases fail to comply with these laws. In Jean's case she was no longer being rostered for her guaranteed part-time hours after providing medical advice and requests to be transferred to a safe job, her employer indicating that no suitable role was available. Charlotte was made redundant after announcing her pregnancy, despite having been headhunted and working successfully for 12 months prior.

Childcare robots

In one future state, AI may address some of the reasons that employers discriminate against pregnant women, such as costs and productivity losses associated with parental leave or accommodations required for pregnant employees. Chapter 17 of Tracey Spicer's book, *Man Made*, is devoted to discussing childcare robots "You'll even be able to transfer your foetus to a robotic uterus".[28] Quoting AI expert Dr Michelle Tempest, she writes "Mums and dads will, in effect, have the option of becoming holiday parents, who need only to spend time with their children on day trips and family vacations".[29] Futurist Alexandra Whittington sets out one possible future where women may find it easier to be single mothers with the aid of an AI parenting assistant.[30]

Potential for AI to reinforce existing discrimination practices

In the meantime, AI tools already being used in recruitment or performance evaluation processes have the potential to reinforce existing discriminatory practices like those seen in Jean and Charlotte's cases. Reliance on such opaque tools by employers to make hiring, rostering, promotion and firing decisions may make it more difficult for women like Jean and Charlotte to identify that pregnancy discrimination is the reason for their loss of shifts or redundancy.

Being aware of the potential for AI data-driven decisions to reflect past pregnancy discrimination could assist in the development of AI algorithms to flag and prevent the biases that lead to these discriminatory practices. The likelihood of the implementation of this kind of positive innovation relies on having a workplace culture that genuinely values the contribution of a diverse workforce. If Jean experienced this discrimination in a female dominated industry, what hope was there for Charlotte in her male-dominated workplace?

Until we see this shift in culture, persistent bias, and discrimination – coupled with inflexible work cultures that do not accommodate, and in fact penalise, those with caregiving responsibilities – will continue to stymie the career progression of women like Jean and Charlotte.

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[28] Tracey Spicer, *Man Made* (Simon & Schuster Australia, 3 May 2023) 153.
[29] Ibid 154.
[30] Alexandra Whittington, 'Women's Futures in a World of AI: Maternity and Motherhood' (LinkedIn, 2 May 2018) < https://www.linkedin.com/pulse/womens-futures-world-ai-maternity-motherhood-alexandra-whittington/>.

Health data privacy concerns

The Medibank cyber breach in October 2022 which led to the release of health claim data on a dark web forum in December 2022, highlighted the risk of having sensitive personal data such as pregnancy status fall into the wrong hands.[31]

Recognising that AI systems often rely on large amounts of personal data to make decisions. There is a risk that improper handling of such data can lead to unauthorised disclosures or misuse, potentially exacerbating existing discriminatory practices or creating new vulnerabilities for pregnant employees (see the section below on data breaches).

CASE STUDY – DATA BREACHES

Case Study – Bonnie

Bonnie was in a long-term relationship with her partner and worked as a primary school teacher when her partner began to make death threats towards her. Her partner had threatened that "if anyone finds out [about the threats], I will kill you". Bonnie was frightened for her safety. She made a request for domestic family violence paid leave from her employer, which was approved and paid.

To protect Bonnie, her employer recorded the leave as 'special', to ensure that the reason she was seeking the leave remained confidential. Unfortunately, she found out that her employer had left copies of her emails seeking the leave, and the reasons why, in manila folders laying around the office.

The breaches in confidentiality and the handling of the matter damaged Bonnie's psychological health and her safety at work (and at home!).

DISCUSSION – DATA BREACHES

Bonnie's distressing experience arises from a combination of domestic violence and an apparently simple - but serious - human error.

However, there is no guarantee that similar mishandling of confidential material would not occur from automating the leave request procedures using generative AI. In fact, the risk to Bonnie may be significantly magnified by AI systems which are trained on massive amounts of data. There is a genuine risk that Bonnie's privacy and the confidentiality of her leave request could be breached and accessed by an entity providing generative AI services to that employer.

[31] Josh Taylor, 'Medibank hackers announce 'case closed' and dump huge data file on dark web,' *The Guardian* (online, 1 December 2022) <https://www.theguardian.com/australia-news/2022/dec/01/medibank-hackers-announce-case-closed-and-dump-huge-data-file-on-dark-web>.

The risk of AI data breaches was considered by the AI Threat Landscape Report which reported that 98% of IT leaders consider their AI models are crucial to business success but 77% of companies have already faced AI breaches.[32] Almost all were working on strategies to tackle the emerging threat.[33]

The author of the Report neatly summarised the significance of the emerging problem:

> "*Artificial intelligence is, by a wide margin, the most vulnerable technology ever to be deployed in production systems. It's vulnerable at a code level, during training and development, post-deployment, over networks, via generative outputs, and more."*[34]

An example of how AI data breaches may be more significant than current data breaches is illustrated in this example:

> *An AI-powered healthcare platform specializing in personalised genetic analysis and medical recommendations based on individual DNA data. The platform collects highly sensitive personal data, including medical history, genetic sequences, and medical diagnoses, to generate personalised healthcare predictions, such as predispositions to diseases, potential health risks, and medication and lifestyle recommendations. In addition to the risk of identity theft, a breach of data could result in targeted health-related scams, modifications to insurance coverage, implications to employment status, and reputational damage if it falls into the wrong hands.*[35]

The Medibank data breach was mentioned in relation to health data and pregnancy discrimination above. Data breaches on much larger scales have become a common occurrence in Australia (for example, Optus, Latitude Financial, Service NSW, ANU). The Optus breach impacted up to 9.8 million customers, almost 40% of the population.[36]

Personal data that has been that has been improperly accessed in these breaches includes usernames, real names, email addresses, physical addresses, encrypted passwords, payment details, drives licence details, dates of birth, phone numbers, government ID numbers, Medicare records and more. Such data breaches have the potential to compromise the safety of women like Bonnie experiencing family and domestic violence, for example revealing the physical address of a victim-survivor.

Data breaches in AI systems pose a variety of complex threats to privacy which must be addressed. These include:

- *Personal data exposure*
  Exposure of personal data can lead to identity theft, fraud, and other malicious uses.

- *Re-identification of anonymised data*

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[32] HiddenLayer, *AI Threat Landscape Report* (Report, 2024) 3-4 < https://hiddenlayer.com/threatreport2024/>.
[33] Ibid 4.
[34] Ibid 2.
[35] MandyPote, 'The Dark Side of AI Data Privacy: What You Need to Know to Stay Secure' (Coalfire, 25 January 2024) <https://coalfire.com/the-coalfire-blog/the-dark-side-of-ai-data-privacy>.
[36] Edward Kost, '13 Biggest Data Breaches in Australia [Updates 2024] (Upguard, 6 June 2024) <www.upguard.com/blog/biggest-data-breaches-australia>.

AI tools can sometimes be used to re-identify individuals from supposedly anonymous data by correlating various data points and thereby compromising individual privacy.

- *Sensitive information leakage*
  AI systems commonly capture sensitive information such as health records, financial data, or personal communications. Breaches of sensitive information could lead to embarrassment, discrimination, or financial harm.

- *Surveillance and tracking*
  AI systems that process surveillance cameras or social media may be used to monitor individuals without their consent and violating their privacy.

- S*econdary use of data*
  Breached data may be used for unintended purposes such as targeted advertising, profiling or influencing political opinions.

- *Malicious use*
  As AI tools proliferate, it becomes increasingly easy for hostile actors to generate scripts to scrape and collate data, for malicious purposes.

Government entities and commercial organisations, regulators and insurers expend significant resources in attempts to mitigate and respond to these risks. However, in low paid, feminised industries like childcare or primary school teaching, employers like Bonnie's school may not have the resources to take the steps required to effectively mitigate these risks, such as rigorous security audits and assessments.

CASE STUDIES – WORKPLACE SURVEILLANCE AND PERFORMANCE MONITORING

Case Study – Layla

Remember Layla's case from the sexual harassment discussion, the woman who complained to her employer about unwelcomed behaviours by her colleague?

Layla, not the man, was relocated to another office location and was still required to work on the same team as her perpetrator. When directed to work directly with, and travel to another location with the man as part of a small team Layla was concerned about her safety and expressed her concerns to her employer. The employer responded that it would be difficult for the two parties to avoid spending time together, given the size of the team.

A few days after her complaint, Layla was issued a performance improvement plan (PIP) which indicated that she was not meeting targets nor following processes. With no previous warnings and no prior disciplinary issues, this contrasted the positive feedback she had previously received.

Layla no longer feels safe in her workplace. Her racial background has been used as a reason to not address verbal and sexual harassment and she has been required to travel and work with her perpetrator. To maintain her employment following her complaint, she must now ensure she meets the measures set out in a PIP, despite the stressors of the work environment.

Layla is now very concerned about the security of her ongoing employment and her case is ongoing.

Case Study – Tracy

Tracy's supervisors and fellow workers were all male, and as part of her apprenticeship was required to have workbooks signed off by her supervisor. This caused delays for Tracy in receiving her qualification. She was called names in the workplace and was referred to as "Sadie the cleaning lady" given she was given all the cleaning and kitchen duties and other menial jobs on the worksite. Her work hours were 8am–4pm, but the employer expected and pressured workers to work unpaid overtime beyond normal finish times. Tracy would refuse and her refusal to do this unpaid work resulted in the employer not signing or completing her workbooks. The resulting stress impacted Tracy's health and she went on sick leave.

Because of her gender, Tracy was given different work tasks and was called names. Tracy's qualifications and the oversight of her apprenticeship were impacted by the withholding of signing off her workbooks in retaliation for her upholding her working conditions.

Following advice from WWQ, Tracy used the dispute resolution processes provided by the Award to try to compel the employer to sign off on the workbooks so she could complete her qualification. Through this process, the employer found an alleged safety breach and indicated Tracy would be investigated. Tracy no longer felt safe at the workplace and resigned.

Through the training provider, a new employer was found, took care of her apprenticeship, and signed off on her training. The advice and support provided by WWQ enabled Tracy to maintain employment and complete her qualification. Importantly Tracy was supported with information and advice on processes to enable her to stand up to underpayments and poor workplace conditions and gender-based discrimination.

DISCUSSION - WORKPLACE SURVEILLANCE AND PERFORMANCE MONITORING

In both Layla and Tracy's cases, their employers used accusations of poor performance to threaten their continued employment and livelihoods.

A few days after Layla complained about sexual harassment, despite previously receiving only positive feedback, she was issued a performance improvement plan (PIP) which indicated that she was not meeting targets nor following processes.

Tracy's refusal to do unpaid work resulted in the employer not signing or completing her workbooks needed for her to complete her qualification. Tracy's attempt to use the dispute resolution processes provided by the Award to try to compel the employer to sign off on the workbooks led her employer to find an alleged safety breach for which she would be investigated.

AI-powered workplace performance measurement

How might AI-powered workplace monitoring and performance measurement change Layla and Tracy's experiences?

AI-powered performance monitoring and measurement tools have the potential to provide benefits, such as:

- Objective performance evaluation based on unbiased measurements rather than subjective views

- Identification of skill development needs through the review of performance data
- Support for work-life balance through the streamlined management of workload priorities and tasks

The realisation of these potential benefits of AI will depend on the intention with which the tools are designed, the data on which the machine learns to make its assessments and the power of women like Layla and Tracy to access and influence the use of such tools.

AI tools that reflect historical discriminatory data, demographic and cultural stereotypes will inevitably lead to discriminatory outcomes. These discriminatory outcomes may become harder for women like Layla and Tracy to challenge when decisions are made with AI-tools based on opaque algorithms and data, making it difficult to identify and understand exactly how decisions were made. With unequal gendered workplace power dynamics, particularly in male-dominated workplaces like Layla and Tracy's, there is a risk that AI tools would only be used to create ongoing pressure on women to demonstrate productivity, leading to a culture unpaid work, long hours and constant availability are the expected norm. We include the below example as set out in Tracey Spicer's book:

"Another example involves teachers rather than students. Over a period of four years, teachers in Houston are evaluated by a data-driven algorithm called the Educational Value-Added Assessment System. This decides which teachers get bonuses, are sanctioned for poor scores or are actually fired. 'Obviously something like that is going to really affect low socio-economic groups,' Dr Emma Schleiger from CSIRO's Data61 tells me. 'Schoolteachers with classrooms of students that don't have all of those opportunities at other schools could do poorly on a standardised test. But that doesn't mean the teacher is doing poorly.

If you think this is unfair, it gets worse: there's no recourse. Teachers are unable to challenge the decisions or ask for an explanation. The algorithm's codes are trade secrets owned by a third party. Following a lengthy lawsuit, a federal judge rules this denies teachers their constitutional rights. We'll see more of these cases as workers and unions take action over the use of impenetrable artificial intelligence."[37]

To ensure that women's needs are adequately addressed in the development of and access to AI tools for workplace performance monitoring and measurement, women need to be involved in the design, testing and implementation of such tools in workplaces. Only then will the issues that are more likely to impact women's work life and opportunities – such as childcare, menstrual health and wellbeing, menopause, sexual harassment, domestic violence and the impact of historical loss of opportunity for advancement – be taken into account.

Workplace surveillance privacy concerns

Any benefits to the use of AI systems to provide objective performance data to make performance assessment fairer, need to be weighed against the serious risk of unacceptable invasion of employees' privacy.

As discussed earlier in the section on sexual harassment, research has shown that women are at higher risk of worker surveillance. The need for technology-neutral regulation to ensure protection of working women's rights in the face of rapid technology-driven change is particularly evident in this area of workplace surveillance.

[37] Tracey Spicer, *Man Made* (Simon & Schuster Australia, 3 May 2023) 232.

Different state and territory workplace surveillance legislation prohibits employers monitoring their employees at work through covert surveillance methods, such as the use of CCTV cameras or computer, internet, and email surveillance. However, the technology and language around it is evolving much faster than the ability of regulation to keep pace.

Back in 2014, the Australian Law Reform Commission (**ALRC**) issued its Report *Serious Invasions of Privacy in the Digital Era*, recommending that the existing surveillance laws of that time be harmonised under national legislation and most pertinently, also recommended that such legislation be technology neutral - so that it would apply to new devices.[38]

> "*Surveillance legislation should also be technology neutral, so that the law can apply to new devices, such as unmanned aerial vehicles (drones), as well as to surveillance technologies which are not 'devices' in the traditional sense, such as software or networks of devices. The ALRC also questions the value of the existing distinction built into the law between surveillance using a device and surveillance using a communications network*."[39]

If the recommendations the ALRC made in 2014 had been implemented by law makers across the country, the kind of workplace surveillance risks we're identifying for Layla and Tracy would have better coverage than is currently the case.

CASE STUDIES – INTERSECTIONAL CONSIDERATIONS

Case Study – Alita

Alita is a legally blind woman who lives in a regional and remote location in Queensland. As a permanent part-time employee when her organisation went through a restructuring process, the employer altered her position to her detriment. The new management refused reasonable adjustments and would not accommodate her disability. Alita was put on an improvement plan that included discriminatory terms which created significant emotional distress to Alita and when she was required to go on unpaid leave, financial loss.

Initially Alita tried to resolve the problem internally, although new management were not willing to engage in discussions and Alita felt that she had no power or ability to challenge the employer and behaviours that she knew were wrong. After contacting WWQ Alita was aware of her rights and was provided with options for moving forward.

Alita was driven by a desire to create a legacy and ensure that other employees did not experience this sort of treatment. She resigned from the workplace and lodged a disability discrimination claim in the QHRC given she had experienced both direct and indirect impairment discrimination in the workplace.

WWQ advocated for the matter to be listed as a priority matter with the QHRC and the matter was lodged and resolved within a three-month period. WWQ assisted Alita with the drafting of the complaint and provided representation at conciliation. Alita received compensation, a statement of service and received an apology from the employer. Discrimination training was provided to all staff.

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[38] Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era* (Final Report, June 2014) 26.
[39] Ibid 26 [1.51].

Case Study - Sheree

Sheree had only been working with the employer for a brief period and had been employed casually as a disability worker. Sheree is over 60 years old and an Aboriginal woman experiencing financial disadvantage. After experiencing racial discrimination at work, Sheree made a complaint to her manager about the discrimination. In response to her complaint, the manager queried Sheree about her suitability for the role and fit within the wider organisation. Ultimately following her complaint, Sheree's employment was terminated.

Sheree sought advice from WWQ just within the time limit to lodge a general protections dismissal dispute with the FWC. Driven by her financial hardship and for discrimination to not occur again, WWQ lodged a general protections application on Sheree's behalf and the matter was resolved prior to conciliation.

Sheree received compensation, a written apology, and a statement of service from the employer. Sheree was able to resign from that employment (rather than have a termination recorded) and all staff were required to participate in Cultural competency training by the employer.

DISCUSSION – INTERSECTIONAL CONSIDERATIONS

The cases of Alita, a woman with a disability living in a remote area, and Sheree, an older Aboriginal woman, provide just a few examples of how the negative impacts and risks can be compounded when there is more than one dimension to disadvantage and requires an intersectional approach to address.

Algorithmic Bias

While in theory AI could help to overcome or identify decision-making bias in humans, it can also make it worse.

Whether it's women, gender diverse people, women with a disability, First Nations women, women living regional, rural and remote areas, older women, or women from culturally and linguistically diverse backgrounds, the under-representation of these cohorts in the data used to train AI and develop AI tools can lead to algorithmic bias. This means that the AI tool itself or its data outputs "treat one group less favourably than another, without justification."[40] This can lead to a situation where marginalised groups are discriminated against or further marginalised through AI.

With WWQ's help, Alita was successful in taking legal action against her employer for disability discrimination when it placed her on an improvement plan that did not make accommodations for her disability. If future performance plans are generated using AI tools and employee performance against such plans are measured using AI tools, it may be more difficult to demonstrate discrimination has occurred.

Forbes has referred to AI as the new "flight of stairs" for job applicants with disabilities. One reason for this is that data which AI relies on can include 'statistical norms' where "the further away from any 'norm' you are, the less likely the AI will meet your need."[41] For example, employees with disabilities may be unfairly disadvantaged

[40] Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 1 March 2021) 106.
[41] Nancy Doyle, 'Artificial Intelligence is dangerous for disabled people at work: 4 takeaways for developers and buyers', *Forbes* (online, 11 October 2022) <https://www.forbes.com/sites/drnancydoyle/2022/10/11/artificial-intelligence-is-dangerous-for-disabled-people-at-work-4-takeaways-for-developers-and-buyers/?sh=3cb03fe335d3 >.

when their employers use AI-tools to track an employee's utilisation/productivity if the tool does not accurately consider that disability.[42]

Women With Disabilities Australia provides examples of negative impacts of algorithmic bias on women with disabilities in recruitment. These include video interview assessments which penalise people with certain disabilities when scores are created based on AI analysis of speech and facial expressions, also noting that, in technical roles, recruitment tools powered by AI have been found to favour male applicants as males have historically dominated the industry.[43]

AI will ultimately reflect the human socio-cultural biases of its creators.[44] In majority of cases, those creators will not be older Aboriginal or Torres Strait Islanders like Sheree or women with a disability living in remote Queensland. Rather, it will reflect the socio-cultural worldview of 'Silicon Valley.' This bias has the potential to reinforce Australia's strong history of intergenerational impacts of social, cultural, and political marginalisation, reflected in the disability discrimination Alita experienced or the racial discrimination that Sheree experienced at work.

Digital divide – Regional, rural, and remote

Alita is one of the 1 in 4 Australians who live in a regional remote area. Her geographical location may well shape the way she experiences AI systems in the workplace as a woman with a disability, for better or for worse.[45]

It is unsurprising that the individuals in geographically remote locations are scoring significantly lower on the digital inclusion index than their urban counterparts.[46] 'Employment opportunities for women in these areas may not be as frequent or varied as a result of smaller and less diverse local economies.'[47] Access to internet and mobile coverage in these areas is significantly less than in urban areas which may significantly impact their ability to both search for employment and participate in remote working arrangements. A study conducted by RMIT University found that mobile data speeds in rural towns with a large First Nations population were reported to be 90% slower on average than those in urban areas.[48]

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[42] Ibid.
[43] Sophie Cusworth, 'Response to 'Safe and responsible AI in Australia' (Discussion Paper, Women With Disabilities Australia, Department of Industry, Science and Resources, July 2023) 5.
[44] Maggie Walter and Tahu Kukutai, 'The Effective and Ethical Development of Artificial Intelligence: An Opportunity to Improve Our Wellbeing - Artificial Intelligence and Indigenous Data Sovereignty' (Input Paper, Horizon Scanning Series, Australian Council of Learned Academies, 2018) 3.
[45] 'Rural health workforce,' *Australian Government Department of Health and Aged Care* (Web Page) <https://www.health.gov.au/topics/rural-health-workforce>.
[46] Susie Sheldrick, 'Computer Says No: Key issuing facing SMEs in regional and remote Australia regarding AI', *Centre for AI and Digital Ethics,* (Web Page) <https://www.unimelb.edu.au/caide/research-archive/graduate-research/computer-says-no-key-issues-regarding-the-uptake-of-ai-by-smes-in-regional-and-remote-australia>.
[47] Australian Bureau of Statistics, *Perspectives on Regional Australia: Women's Employment in Urban, Rural and Regional Australia, 2001 Census* (Catalogue No 1380.0.55.001, 17 August 2004).
[48] Khaled Al Khawaldeh, '"Digital divide": report finds some Australian rural mobile data speeds 90% slower than urban', *The Guardian* (online, 13 December 2022) < https://www.theguardian.com/australia-news/2022/dec/13/digital-divide-report-finds-some-australian-rural-mobile-data-speeds-90-slower-than-urban>.

Without active measures to address this 'digital divide', it is only likely to increase with the reliance on AI tools in the workplace that may simply reinforce or exacerbate existing inequality, particularly remote Aboriginal and Torres Strait Islander communities.[49]

Access to beneficial AI technology

There are many exciting possibilities for new technologies like AI and neurotechnology to increase inclusion for people with disabilities in the workplace. For Alita who is legally blind, the development of assistive technology like Soundscape, which aids in providing users with low vision or blindness with audio information (a map) of their surroundings,[50] or AbilityWorks AI powered robots designed to support people with vision impairments, may transform her work life.[51]

However, the people who need these innovations the most may also be the people least likely to have the power to influence their development or funds required to access them.

A report to the Australian Human Rights Commission states:

> *"Although new technology exposes the product of artificial intelligence to a more diverse and wide range of people, it can also increase the barriers for people with disability used in ways that are not accessible. The way people with disabilities engage with the new technology, their level of digital literacy, determines their overall opinions and attitudes of the implementation of AI. This analysis expresses the tactical challenge of creating a new tool that has flexible rules on how the contents of the AI program may be used and exercised and in what form it is presented. The reoccurring example noted is the inability to access online services that cannot be read by screen readers for people with vision impairment and its infringement on human rights."*[52]

Higher rates of technology-facilitated abuse for some cohorts

The risk of workplace technology facilitated sexual harassment (see the section above on sexual harassment) and the barriers to seeking redress may be even greater for women like Alita and Sheree.

Research conducted by The Centre for Aboriginal Economic Policy Research at the Australian National University found that First Nations and Torres Strait Islander women living in remote and regional Australia are disproportionately more vulnerable to technology-facilitated abuse. These women are also experiencing online harm and abuse using technology as part of domestic violence, at significantly higher rates than that of the wider Australian population.[53]

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[49] Walter and Kukutai (n 42).
[50] Ibid.
[51] Ibid 27.
[52] Jonathan Crock et al, *The Human Right to Democratic Control of Artificial Intelligence: Report to Australian Human Rights Commission on the "Human Rights and Technology: Discussion Paper"* (Discussion Paper, April 2020) 43.
[53] eSafety Commissioner, *Can I just share my story? Experiences of technology-facilitated abuse among Aboriginal and Torres Strait Islander women from regional and remote areas* (Report, August 2021) 6.

Data was collected from Aboriginal and Torres Strait Islander women living in three remote locations in Australia: Central Australia, remote Western Australia, and regional New South Wales.[54] The disproportionate experience of First Nationals and Torres Strait Islander women in these remote communities was attributable to a lack of education around digital literacy and accessible services.[55]

The Australian eSafety Commissioner has similarly reported on research on the risks to women with disabilities who have experienced technology facilitated abuse covering why women with disabilities are particularly susceptible to technology facilitated abuse and the challenges they face when seeking help.[56]

This research and the case work experience of WWQ points to the need for an intersectional response and culturally appropriate services to respond to this risk.

CASE STUDIES – JOB REPLACEMENT

Case Studies

The case studies of Jean, Layla, Sheree, Mei and Alita, described above, demonstrate that women are often especially vulnerable to job insecurity, and further that their vulnerability to job insecurity may be compounded due to other aspects of their personhood, such as disability, pregnancy, or being culturally and linguistically diverse.

In the case of Alita, she was a blind woman who was discriminated against based on her blindness when her employer refused to make reasonable adjustments to accommodate her disability. With WWQ assistance, she received a compensation payout, an apology from her employer, and her employer ensured that discrimination training was provided to all its staff. And yet Alita's future job security is by no means certain in a world dominated by AI automation.

Background

In 2014, the New Inquiry reported on an investigation performed by Andrew Norman **Wilson** into Google's labour practices. Wilson noticed the existence of a class of marginalised 'yellow-badged' workers who were hired to scan and digitise printed matter for Google Books, and whose yellow badges meant that they were not able to enjoy the same privileges that the other contractors who, like Wilson, carried red badges. These yellow-badged workers were mostly women, were people of colour, and worked in an office building adjacent to the building that Wilson worked in. Wilson decided to interview some of them before, and managed to get a few minutes of tape, before he was caught by Google security. He was fired shortly after.[57]

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[54] Ibid 6.
[55] Ibid 8.
[56] Bridget Harris and Delaney Woodlock, '*For my Safety:' Experiences of technology-facilitated abuse among women with intellectual disability or cognitive disability (*Research Report, *eSafety* Commissioner, August 2021).

[57] Pascal Emmanuel Gobry, 'At Google, Talking to Coworkers Can Get You Fired', Business Insider (online) <https://www.businessinsider.com/at-google-talking-to-coworkers-can-get-you-fired-2011-4>.

There are contemporary examples of similar labour practices, like Amazon's 'Mechanical Turk' which describes itself as a marketplace for the completion of virtual tasks that require human intelligence.[58] It allows businesses to request performance of certain discrete on-demand tasks that computers are unable to perform. These 'Human Intelligence Tasks' are performed by 'Turkers' for sums between US$1.20 and US$5 per hour. Historical research indicates that Turkers are predominantly women from cultures and backgrounds other than English (or American).[59]

Narratives around the development of AI often emphasises the ability of machines to get smarter over time. However, research and reporting also indicates that the 'training' of AI models is often performed by human workers, the demographics of whom are mostly women of colour.[60]

Future of AI

With the advent of AI, the International Monetary Fund (**IMF**) has reported that up to 40% of global employment will be affected by the introduction of AI. Goldman Sachs has reported that 300 million jobs could be lost or diminished by generative AI.[61] The IMF has also recognised that women, college-educated individuals and older workers are more exposed to role redundancy due to the nature of women's work, being 'cognitive-intensive occupations', is more exposed to AI technologies. It also suggests that both older workers and women will be challenged by issues in re-employment, adaptation to new technologies, job mobility, and acquiring new job skills.[62] It is plausible that in the face of these systemic and structural challenges, women will be forced to participate in more and more exploitative labour regimes such as those offered by the Amazon Mechanical Turk marketplace. Conversely, the University of Melbourne suggests that as women tend to dominate the caring professions, like nursing, teaching, social workers, they are unlikely to have their professions disrupted by AI like other professions. In fact, they suggest that the ageing Baby Boomer generation will require greater and greater care in the coming decade, which will mean that the caring professions will thrive. Professor Ruppanner and Dr Churchill suggest the possibility that men, who are having their historically dominated professions disrupted by AI tech, will migrate to the caring professions and in so doing, may displace the pre-existing structures.[63]

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[58] Amazon, 'FAQ's: About Amazon Mechanical Turk', *Amazon Mechanical Turk Worker* (Web Page) <https://www.mturk.com/worker/help>.
[59] Panos Ipeirotis, 'Demographics of Mechanical Turk' (Working Paper NoCEDER-10-01, Leonard N. Stern School of Business, New York University,6 April 2010); Aaron J. Moss et al, 'Is it Ethical to Use Mechanical Turk for Behavioral Research? Relevant Data from a Representative Survey of MTurk Participants and Wages' (Research Paper, Prime Research Solutions, 28 April 2020) <https://doi.org/10.31234/osf.io/jbc9d>.
[60] Oscar Schwartz, 'Untold History of AI: How Amazon's Mechanical Turkers Got Squeezed Inside the Machine - Today's unseen digital laborers resemble the human who powered the 18th-century Mechanical Turk', *IEEE Spectrum* (online, 22 April 2019) <https://spectrum.ieee.org/untold-history-of-ai-mechanical-turk-revisited-tktkt>.
[61] Jack Kelly, 'Goldman Sachs Predicts 300 Million Jobs Will Be Lost Or Degraded By Artificial Intelligence', *Forbes* (online, 31 March 2023) <https://www.forbes.com/sites/jackkelly/2023/03/31/goldman-sachs-predicts-300-million-jobs-will-be-lost-or-degraded-by-artificial-intelligence/?sh=4c8f5a80782b>.
[62] Mauro Cazzaniga et al, 'Gen-AI: Artificial Intelligence and the Future of Work' (IMF Staff Discussion Note No SDN2024/001, International Monetary Fund, January 2024).
[63] Leah Ruppanner and Brendan Churchill, 'AI, automation and women,' *Pursuit* (online, 7 March 2023) <https://pursuit.unimelb.edu.au/articles/ai-automation-and-women>.

Hiring Practices

In 2018, Amazon decided to shut down its then-experimental Artificial Intelligence recruitment tool after discovering that it discriminated against women.[64] It discovered that, as the AI recruitment tool had been trained on 10 years of data culled from Amazon's own recruitment practices, it was rejecting women's resumes. It automatically penalised resumes that included the term "women's" and it routinely downgraded resumes bearing the names of all-women's colleges.[65] Amazon did not dispute that recruiters looked at the recommendations generated by the recruiting engine. Women like Jean, Sheree and Alita may find themselves particularly at risk of future automated systems discriminating against them, which is particularly problematic is there is a corresponding lack of sufficient human oversight over the process, or insight into the 'black-box' of generative AI's algorithms.

Gender Pay Gap

The IMF also reports that AI could re-shape wealth and income distribution as it disrupts global marketplaces.[66] The contemporary prevalence of AI has been widely reported as a fourth industrial revolution.[67] These claims have been the subject of academic criticism, as the application of AI technology seems to contribute to increasing income inequality rather than decreasing it.[68] Issues relating to income inequality in contemporary Australia, such as the gender pay gap, are therefore likely to be exacerbated by AI, rather than ameliorated.

There is academic concern that such ongoing inequality may have a negative feedback loop, a 'vicious cycle' whereby AI tools 'mirror' the entrenched gender biases against women in society and perpetuate those biases by furthering that inequality – with limited human oversight or insight into the concatenation of these inequalities.[69] These inequalities are 'horizontal', i.e. there is gender segregation across industrial groups within society, as well as 'vertical', that is hierarchical disparities between men and women. Ultimately, women lose out as the gender pay gap widens.

On the other hand, the AI Group, a peak Australian national employer organisation, has nevertheless reported that AI tools can assist Australian society with taking steps to reduce currently endemic and entrenched issues like the gender pay gap.[70] It has stated that the annual data released by the Workplace Gender Equality Agency is fertile ground for the role of AI to increase transparency into and accountability for employers, and to help motivate employers to take actions that drive a more equal experience for all employees.

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[64] Maude Lavanhy, 'Amazon's Sexist Hiring Algorithm Could Still Be Better Than A Human,' *The Conversation* (online, November 2018) < https://theconversation.com/amazons-sexist-hiring-algorithm-could-still-be-better-than-a-human-105270>.
[65] See also Jeffrey Dastin, 'Insight – Amazon scraps secret AI recruiting tool that showed bias against women', *Reuters* (online, October 2011) <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G/>.
[66] Mauro Cazzaniga et al (n 60).
[67] 'What are Industry 4.0, the Fourth Industrial Revolution, and 4IR?', *McKinsey & Company* (Web Page, 17 August 2022) <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-are-industry-4-0-the-fourth-industrial-revolution-and-4ir>.
[68] Jule Tabel, 'Silicon Valley's "AI Revolution": A revolutionary narrative serving the status quo', (Thesis, University of Twente, Public Governance Across Borders, 29 June 2022).
[69] Estrella Gomez-Herrera and Sabine Koeszegi, 'A gender perspective on artificial intelligence and jobs: the vicious cycle of digital inequality' (Working Paper No 15/2022, Bruegel, 30 August 2022).
[70] Wendy Larter, 'Gender pay gap findings an opportunity for action,' *Ai Group* (Blog Post, 27 February 2024) <https://www.aigroup.com.au/news/blogs/2024/gender-pay-gap-findings-an-opportunity-for-action/>.

Submission to the Inquiry into the Digital Transformation of Workplaces

We are thankful for the opportunity to make this submission to the House of Representatives Standing Committee on Employment, Education and Training.

If you would like further information or would like to discuss the submission, please contact Eloise Dalton on

Yours sincerely

Basic Rights Queensland

Per:

Eloise Dalton, Director

Working Women Queensland