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## DP-REG Digital Technologies Working Group

23 November 2022, 2:00pm – 3:30pm

### Attendance:

- ACCC – [REDACTED]
- eSafety – [REDACTED]
  - Apologies: [REDACTED]
- OAIC – [REDACTED]
- ACMA – [REDACTED]

*Minutes prepared by the ACCC*

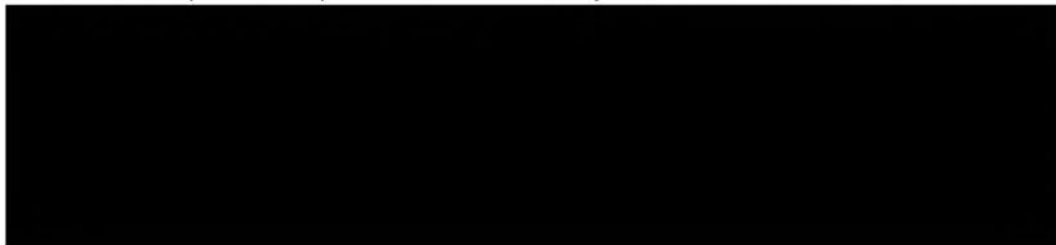
### Open Meeting and confirm minutes

The Chair opened the meeting, and the minutes of the previous meeting were approved.

### Agency updates, including attendance at any events and/or any upcoming events

#### ACMA

- ACMA is hoping to receive new powers to help it combat mis- and dis-information. ACMA is hopeful the Minister will make a statement before the end of the year, ahead of a possible exposure draft in the new year.



#### eSafety

- eSafety is currently finalising a position statement on algorithms and recommender systems. This will likely be published in next couple of weeks, so by our next meeting eSafety should be able to give more of an update on it.

#### OAIC

- The [Privacy Legislation Amendment \(Enforcement and Other Measures\) Bill](#) has been introduced to Parliament and is currently before the Senate. If passed, this Bill would:
  - Increase the maximum penalty for serious or repeated interferences with privacy to match those in the [Competition and Consumer Act](#).
  - Grant enhanced enforcement powers to the OAIC, including by strengthening the notifiable data breaches scheme and allowing enforcement against foreign companies that carry on a business in Australia, even if they do not collect or hold Australians' information from an Australian source
  - Enhance the Commissioner's information-sharing powers (which could make it easier for the OAIC to share information with DP-REG colleagues).
- The OAIC co-sponsored a [Resolution on Principles and Expectations for the Appropriate Use of Personal Information in Facial Recognition Technology](#) at the Global Privacy Assembly last month. The OAIC noted that such technology is often powered by algorithms.
- The OAIC has been in discussions with TikTok about a potential meeting, which could include a discussion of how its algorithms work. Other agencies expressed

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interest in hearing more about this and/or being included in it, including the ACCC whose team working on the upcoming Social Media Report would likely also be interested in this.

## ACCC

- The ACCC noted its 5<sup>th</sup> interim report of the DPSI was published on 11 November 2022 and that work on the 6<sup>th</sup> report is underway.
- The ACCC's Kate Reader (along with the OAIC's Sarah Ghali) spoke at the IAPP ANZ Privacy Summit this week.

## Algorithms Literature review

The ACCC noted it had shared three documents before the meeting to talk through in relation to the literature review. These were a database, a template setting out the format for conducting the review, and a set of timelines and milestones.

### Database

- The group discussed a number of outstanding issues in relation to the format of the database, including the approach to noting relevant categories of harm and algorithm types. It was agreed that up to three columns could be used for identifying categories of harm, with additional categories of harm or further explanations to be noted in the 'Other comments' box or in the 'Key findings' column.
- In terms of articles that discuss harms arising from more than one algorithm type (e.g. both recommender system algorithms and targeted advertising algorithms), it was agreed the **ACCC** would add a 'General' category to the relevant dropdown menu, with further information to be provided in the 'Other comments' box where necessary.

### Format of written literature review

- The ACCC ran through a summary of the template. In the discussion that followed, the group clarified that the core aim of the literature review was to highlight the key risks and harms associated with algorithms as opposed to regulatory initiatives responding to these harms. It was agreed that text at the beginning of the regulatory initiatives section should reflect that the regulatory initiatives noted are examples and that this section is not meant to be exhaustive, nor does it aim to evaluate these initiatives.
- The group also noted the possible option of presenting the regulatory initiatives section in a table format and that the structure of the section could change depending on how the literature review pans out – e.g. rather than 'Australian' and 'International' the initiatives may be broken down by the types of reforms or the harms they address.

### Milestones and timelines

- The ACCC provided an overview of proposed timelines for the literature review. **ACCC** agreed to add the dates of upcoming Steering Committee meetings to the Milestones and Timelines document, with a brief update provided to Steering Committee on 2 February and the final output provided to Steering Committee on 24 March.
- The group also clarified that the first draft (due on 27 January) would not include Section 4 (conclusions/next steps). Rather, this will be discussed at the February meeting and subsequently included by the ACCC in the second draft. As for section 3 on regulatory initiatives, first drafts should include notes on possible initiatives for inclusion, with this section being discussed at the February meeting and formalised in the second draft.

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- With these amendments, the group agreed to the milestones and timelines presented. The next step is for each lead to produce a first draft of their section by 27 January 2023. **ACCC** noted an action item to follow up with invites for working group meetings on 8 February and 2 March 2023.

## **DITRDCA and Home Affairs questions for DP-REG Steering Committee on Algorithms (25 November 2022)**

- The OAIC provided context around DITRDCA and Home Affairs' interest in algorithms, and the ACMA noted that Home Affairs now has a dedicated team working on algorithms.
- The ACCC suggested that at Friday's Steering Committee meeting, it would be good to clarify what our working group means when we talk about algorithms, as this may be different to what DITRDCA and Home Affairs have in mind.
- It was agreed that we should manage expectations and continue to make clear that we are still in the early stages of our work and that the focus of this working group is on building capacity and common understanding, not creating or publishing external-facing work.
- The group discussed its approach to sharing outputs with DITRDCA/Home Affairs and publication. Some members noted a potential willingness to share the final output with DITRDCA and/or Home Affairs if requested, provided their expectations are managed appropriately as to the nature and scale of this work. Members agreed to assess the views of their SES on these issues and to liaise via email before Steering Committee on 25 November.
  - [NOTE: Subsequent email exchange between agencies agreed to share this work, subject to appropriately managing expectations]

## **Next steps/Date of next meeting**

- It was agreed that a date towards the end of the week commencing 12 December would be best. The **ACCC** agreed to suggest some possible times via email.