Model Law on the Registration of Algorithmic Decision-Systems
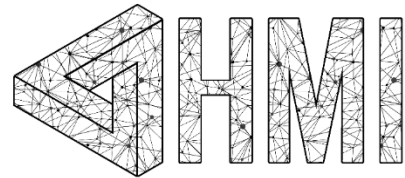
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ANU Humanising Machine Intelligence Grand Challenge

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Article 1: Preliminary

1. Purposes

The purpose of this Model Law is to establish a legally-binding framework for the use of algorithmic decision-systems by governmental and other public sector bodies so as to promote the objectives of:

    a. Citizen awareness of the digital transformation of government activities;

    b. Efficient and effective deployment of advanced technology in the public sector;

    c. Protection of basic rights of citizens; and

    d. Transparency, accountability and fairness in the adoption of advanced technology in the public sector, including artificial intelligence.

2. Interpretation

In this Model Law,

Agency means a government entity exercising public authority, including (without limitation) a natural person, collective body (whether incorporated or not), authority, tribunal or court, established, appointed or performing the duties of an office established for a public purpose, whether or not established by or under legislation.

Algorithmic Decision-System means a computerised system:

    a. for making decisions; or

    b. Which materially impacts the making of decisions.

Armed Forces means activities relating to the military, naval and air forces of national defence.

Data means information which is used in the design, operation and validation of an Algorithmic Decision-System.

exercise of legal authority means the discharge or exercise of any obligation or power under legislation (including a constitution, other organic law, treaty, parliamentary or delegated legislation) or the general law (being principles and rules stated by judicial, and other authoritative, bodies).

exercise of public authority means the exercise of legal authority for a public purpose.

National Security means activities that secure the national interest, including intelligence gathering activities.

Organisation means a natural person, body corporate, partnership, any other unincorporated association or trust that exercises public authority and is not an Agency.

person responsible for the supervision of an Algorithmic Decision-System means a natural person who is legally responsible for monitoring the operation of an automated decision-system.

Prescribed Registration Authority means an Agency prescribed under Art 6.

Public Security means activities relating to the maintenance of public order and security, including law enforcement.

Register means the Register of Algorithmic Decision-Systems created by Art 2.

Technical Specifications means the specification of the technical characteristics of Algorithmic Decision-Systems, including (without limitation):

      a.   the objectives of the Algorithmic Decision-System;

      b.   any Data used in developing or operating the Algorithmic Decision-System;

      c.   the criteria for evaluating the performance of the Algorithmic Decision-System; and

      d.   any processes used in the monitoring or review of the Algorithmic Decision-System.
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use of an Algorithmic Decision-System means the operation of an Algorithmic Decision-System without the direct intervention of a natural person.

Article 2: Register of Algorithmic Decision-Systems

1. Creation

A Register of Algorithmic Decision-Systems is to be maintained and published by the Prescribed Registration Authority.

2. Structure

The Register contains three parts:

 a. A part dealing with Algorithmic Decision-Systems used by Agencies;

 b. A part dealing with Algorithmic Decision-Systems used by Organisations; and

 c. A part dealing with determinations in relation to the Armed Forces, National Security and Public Security made under Art 3.2.

3. Content

The Register shall be composed of entries detailing the following matters relating to Algorithmic Decision-Systems used by Agencies and Organisations in exercising public authority:

 a. The legal authority sought to be exercised through the use of the Algorithmic Decision-System;

 b. The name and official title of the person responsible for the supervision of the Algorithmic Decision-System;

 c. The Technical Specifications of the Algorithmic Decision-System;

 d. A simplified description of the Technical Specifications of the Algorithmic Decision-System; and

 e. A statement concerning the impact of the use of the Algorithmic Decision-System on legal rights and responsibilities.

4. Register entries

Each entry on the Register shall pertain to a single Algorithmic Decision-System.

5. Amendment

The Register may be amended from time to time by Agencies and Organisations in accordance with their obligations under Art 4.

6. Maintenance and access

a. The Register shall be maintained in hardcopy and word-searchable soft-copy.

b. The word-searchable soft-copy of the Register must be made accessible by:

   i. a page on the World Wide Web; and

   ii. a computer terminal, available to the general public during business hours, either on a screen or in the form of a computer printout.

Article 3: Publication of the Register

1. General publication

Each Register entry must be published without qualification or redaction, except as provided in Art 3.2.

2. Limited publication

a. All entries on the Register that pertain to the Armed Forces, National Security and Public Security must be published in accordance with Art 3.1 unless the Prescribed Registration Authority makes a determination in writing that the publication of a particular entry on the Register would cause serious harm to the national interest.

b. If such a written determination is made, the following matters of the relevant Register entry must not be published:

   i. The name and official title of the person responsible for the supervision of the Algorithmic Decision-System;

   ii. The Technical Specifications of the Algorithmic Decision-System; and

   iii. A plain English summary of the Technical Specifications of the Algorithmic Decision-System.

c. Any determination made under Art 3.2 must be published on the Register.

d. A determination made under Art 3.2 does not override any other rule of law requiring disclosure of the matters contained in the relevant Register entry to a person or an investigatory or judicial body.

3. Right to access, inspect and search

Every person has a legally-enforceable right to access, inspect and search the Register entries and determinations published under this Article.

Article 4: Obligations to Register

1. Any Agency or Organisation that proposes to exercise public authority through the use of an Algorithmic Decision-System must enter the following matters onto the Register:

    a. The legal authority sought to be exercised through the use of the Algorithmic Decision-System;

    b. The name and official title of the person responsible for the supervision of the Algorithmic Decision-System;

    c. The Technical Specifications of the Algorithmic Decision-System;

    d. A simplified description of the Technical Specifications of the Algorithmic Decision-System; and

    e. A statement concerning the impact of the Algorithmic Decision-System on legal rights and responsibilities.

2. For the avoidance of doubt, the obligation to make entries onto the Register under this Article extends to Algorithmic Decision-Systems used in relation to the Armed Forces, National Security and Public Security.

Article 5 Consequences of Registration

1. Any attempted exercise of legal authority by an Agency through the use of an Algorithmic Decision-System that is not registered under Art 4 is of no legal force or effect.

2. Any attempted exercise of public authority by an Organisation through the use of an Algorithmic Decision-System that is not registered under Art 4 is of no legal force or effect.

3. Registration of an Algorithmic Decision-System under Art 4 does not displace the operation of any other legal rule governing the lawfulness of any attempted exercise of legal authority by the use of the registered Algorithmic Decision-System.

Article 6 Prescribed Registration Authority

1. An Agency shall be prescribed as the Prescribed Registration Authority to exercise the functions and perform the duties conferred by this Model Law.

2. In the exercise of its functions and performance of its duties under this Model Law, the Prescribed Registration Authority shall be independent of political direction and its officers shall only be dismissed on grounds of proven misbehaviour, incapacity or legal wrongdoing.