



27 May 2024

United Nations Special Rapporteur on the right to education

By email: hrc-sr-education@un.org

Contribution: AI in education

Artificial intelligence (AI) has the capacity to potentially improve and enrich the learning environments for all students, while easing administrative burdens on teachers and school systems more broadly. However, reaching an equilibrium between technological integration in learning spaces while mitigating the possible harms of those same technologies is a difficult task. If education systems adopt AI into classrooms without the necessary safeguards and oversight mechanisms, the human rights of students, parents and teachers may be challenged.

In response to a call for contributions by the Special Rapporteur on the right to education, the Australian Human Rights Commission provides an extract of its [submission](#) on utilising ethical AI in the Australian education system.

The submission, accompanying this letter, was made to the Standing Committee on Employment, Education and Training as part of its [Inquiry into the Use of Generative Artificial Intelligence in the Australian Education System](#) on 14 July 2023. The submission provides insights into the beneficial applications and potential risks of incorporating AI into the Australian education system. It also advocates for human rights-centred design and deployment of new and emerging technologies, and highlights the necessary adjustments required to ensure that AI is being used by the education system in both a responsible and ethical manner.

I would be pleased to discuss this submission further or provide any additional information that may be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Finlay'.

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Utilising ethical AI in the Australian education system

Submission to the Special Rapporteur on the right to education

27 May 2024

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1	Introduction	4
2	AI and the right to education.....	4
3	Strengths of generative AI tools	4
3.1	<i>Improving the student learning experience</i>	4
3.2	<i>Advanced assessment and feedback</i>	5
3.3	<i>Accessible and inclusive education.....</i>	5
3.4	<i>Administrative efficiencies</i>	5
3.5	<i>Data-driven insights.....</i>	5
4	Risks of generative AI tools.....	5
4.1	<i>Privacy and security</i>	6
4.2	<i>Risks of commercialisation</i>	6
4.3	<i>Risk of algorithmic bias and discrimination</i>	7
4.4	<i>The potential for misuse</i>	7
4.5	<i>The risk of undermining educational integrity.....</i>	8
4.6	<i>Developing standards and guidelines.....</i>	8
4.7	<i>Providing professional development for teachers</i>	8
4.8	<i>Promoting digital literacy</i>	9
5	Ensuring digital equity.....	9
5.1	<i>Removing barriers to access</i>	10
5.2	<i>Providing targeted training and capacity building.....</i>	10
5.3	<i>Encouraging community engagement and outreach.....</i>	10
6	International and domestic practices and policies	11

1 Introduction

1. This submission is an extracted version of the submission that the Australian Human Rights Commission made to the Standing Committee on Employment, Education and Training as part of its [Inquiry into the Use of Generative Artificial Intelligence in the Australian Education System](#) on 14 July 2023.
2. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Special Rapporteur on the Right to Education as part a call for contributions concerning [Artificial Intelligence in Education and its Human Rights-based use at the service of the advancement of the Right to Education](#).

2 AI and the right to education

3. Education is 'both a human right in itself and an indispensable means of realizing other human rights'.¹ It is fundamental to ensuring the realisation of individual potential, the full enjoyment of other human rights, and the active engagement of citizens in a democratic society.
4. The right to education is recognised in a range of international human rights instruments,² and 'considerable evidence supports the right to education as a norm of international customary law based on the universality of treaty provisions'.³ It is also reflected in Sustainable Development Goal 4, which aims to '[ensure inclusive and equitable quality education and promote lifelong learning opportunities for all](#)'.

3 Strengths of generative AI tools

5. Some of the key potential benefits of using generative AI tools include personalised and interactive learning, fostering creativity and innovation, advanced assessment and feedback, accessible and inclusive education, administrative efficiencies and data-driven insights.

3.1 Improving the student learning experience

6. Generative AI tools can be used to create personalised learning experiences for students. This personalised approach can help students to learn more effectively and gives students greater control over their own learning.

7. Potential benefits include improved academic performance and increased student engagement. Students can also be encouraged to explore their creative potential by experimenting with AI-generated content (such as artwork, music and writing) through interactive platforms. This helps to foster innovation, problem-solving skills and the ability to think critically, as technology becomes increasingly ubiquitous in our daily lives.

3.2 Advanced assessment and feedback

8. Timely and comprehensive feedback can help students to identify and correct mistakes whilst improving their understanding of content. Generative AI tools can be used to provide immediate and detailed feedback to students enabling continuous and formative assessment. This also benefits teachers by streamlining assessment processes, providing insights into student progress, and allowing for identification of additional support for students.

3.3 Accessible and inclusive education

9. Generative AI tools have the potential to make education more accessible and inclusive by addressing the diverse needs of learners - including those with learning differences or disabilities. Examples include assistive technology such as speech-to-text (such as [Speechify](#)) and language translation tools (such as [Presentation Translator](#)).

3.4 Administrative efficiencies

10. There are a range of teaching tasks that could be automated using generative AI tools, including grading assessments and creating lesson plans.⁴ Reducing the administrative burden on teachers will allow them to spend more time engaging directly with students.

3.5 Data-driven insights

11. A key strength of generative AI tools is their ability to process vast amounts of information and generate data-driven insights. Educators can use these tools to analyse student performance, engagement patterns or learning trends to make informed decisions about curriculum design, or resource allocation. This can potentially be applied at both the individual and systemic levels, enabling comprehensive reports on individual student progress to be produced and allowing for early identification of broader trends.

4 Risks of generative AI tools

12. While generative AI tools may be constructive assets, there are also risks and challenges posed by its use in education systems. While generative AI tools may be able to replace some of the tasks that are currently performed by teachers, this technology is best used to enhance teaching. It cannot replace the indispensable role of human interaction and cooperation, which must remain at the heart of education.

4.1 Privacy and security

13. The right to privacy is a cornerstone human right⁵ and its importance 'in an increasingly data-centric world is growing',⁶ because generative AI tools may not only facilitate privacy intrusions but deepen those intrusions.⁷ Generative AI tools rely on both large data sets to train the technology and the collection of personal data to optimise the individual user experience. This creates a range of privacy risks, particularly given the increased prevalence of cyberattacks and data breaches which the Commission has highlighted in a number of submissions made last year.⁸ These concerns are relevant in the context of using generative AI tools in the education system, where many users will be children who will have no option but to use the technology if it is adopted by their schools.

14. There is an urgent need to ensure that generative AI tools are only adopted where concerns related to data privacy, security and consent are being considered and actively addressed.

4.2 Risks of commercialisation

15. A related risk that requires urgent attention is the potential commercialisation of student data obtained from the use of generative AI tools.

16. Practices such as the sale or transfer of children's personal data to third parties should be banned, or heavily restricted, to protect children's rights. For example, among other things, General Comment 25 requires parties to:

[P]rohibit by law the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association or affinity profiling.⁹

17. One example is the use of student search queries being analysed to inform targeted advertising. Another is for student data obtained via educational AI applications to be on-sold to third parties.¹⁰
18. In 2021, the National Children’s Commissioner warned that, by a child’s 13th birthday, advertisers will have gathered on average more than 72 million data points about them.¹¹ It is essential that the data collected through the use of educational technology at schools should not be used for other purposes, and that children are protected from data surveillance.

4.3 Risk of algorithmic bias and discrimination

19. Generative AI tools are trained on large datasets and generate predictive outputs based on algorithms. It is widely recognised that ‘algorithms are not neutral, they are developed using metadata that exclude information on marginalized groups and are therefore unrepresentative or biased’.¹²
20. This means that generative AI tools can generate biased outputs, potentially perpetuate unfairness or even result in unlawful discrimination.¹³ The risks of bias and discrimination are highlighted in the AI Discussion Paper,¹⁴ and were examined in detail by the Commission in the [Final Report](#) and the [Technical Paper, Using artificial intelligence to make decisions: Addressing the problem of algorithmic bias](#).

4.4 The potential for misuse

21. The [Rapid Response Information Report](#) commissioned by Australia’s National Science and Technology Council similarly identified both large language models (LLMs) and multimodal foundation models (MFMs) as having ‘the potential for misuse by generating high-quality, cheap and personalised content, including for harmful purposes’, with the use of generative AI tools to generate deep fakes.¹⁵
22. The use of generative AI tools in educational settings necessarily raises ethical considerations in terms of their potential use to create fake or manipulated content, such as ‘deepfakes’.¹⁶

4.5 The risk of undermining educational integrity

23. The ease with which essays and other creative works can be produced using generative AI tools increases risks of plagiarism and intellectual dishonesty. The release of ChatGPT in November 2022 immediately gave rise to concerns 'that a tsunami of cheating was on the horizon'.¹⁷
24. In Australia and around the world, schools and universities responded by initially banning these technologies from their devices and networks. There is now growing recognition that an absolute ban on this technology is likely unworkable and disadvantageous for students.¹⁸ In particular any ban that is not consistently applied across the Australian education system will create a digital divide between those who have been taught to use generative AI tools at school, and those who have not.¹⁹ It also forgoes an important opportunity to teach students how to responsibly use new technologies, and to develop necessary skills for the future.
25. Instead, we should aim to encourage the responsible and ethical use of generative AI tools by students, rather than simply banning them. To educate students about the importance of academic integrity, clear guidelines should be established on the appropriate use of AI-generated content, citation practices, and the need for originality in student work.
26. To ensure academic integrity, there must be greater research, development and deployment of digital tools capable of identifying AI-generated content (such as [Checker AI](#)). This demonstrates the duality of AI tools being both a cause, and solution, to challenges in Australia's education system.

4.6 Developing standards and guidelines

27. Consistent national standards and guidelines are essential to ensure the responsible and ethical use of generative AI tools in the Australian education system the Commission welcomes the announcement in the [Communiqué from the Education Ministers Meeting issued on 6 July 2023](#) that the National AI Taskforce will undertake consultation on a Draft AI Framework for Schools.

4.7 Providing professional development for teachers

28. Generative AI tools must be used in ways that harness the benefits while protecting against the risks in the education system. It is essential that professional development and training be provided to teachers (and the

broader education workforce) to allow them to engage effectively with these tools in responsible and ethical ways.

4.8 Promoting digital literacy

29. It is important for students, teachers and parents to be aware of the benefits and risks associated with the use of generative AI tools. To encourage the use of these technologies in responsible and ethical ways, digital literacy training should be prioritised.
30. Education systems should incorporate comprehensive digital literacy programs that empower students to critically evaluate AI-generated content, recognise the limitations and biases of generative AI tools, and understand the importance of academic integrity.

5 Ensuring digital equity

31. While generative AI has the potential to improve educational outcomes, it is critical to address the digital divide and ensure that equitable opportunities are created for all students, regardless of their background.
32. The 2021 Australian Digital Inclusion Index shows that there remains a substantial digital divide in Australia.²⁰ One in 4 people in Australia were identified as being 'digitally excluded' and 'people with low levels of income, education and employment, those living in some regional areas, people aged over 65 and people with a disability' being identified as being of particular risk of being left behind.²¹
33. Students who are unable to access the digital tools they need for school risk miss out on crucial learning opportunities that other students take for granted, potentially exacerbating educational disadvantage. The Smith Family has estimated that 1 in 6 of the families they work with cannot access the digital tools that their children need for school.²² Research published by the Australian Education Union in 2020 revealed a 'persistent long-term gap in digital access, affordability and ability experienced by many public school students'.²³ Ensuring digital inclusion and equity needs to be a key principle informing the use of generative AI in the Australian education system.
34. Generative AI tools can also potentially play a significant role in helping to level the playing field for all students, regardless of their backgrounds. These tools can provide access to high-quality educational content to students from disadvantaged or low socio-economic backgrounds, and the potential for AI-

powered tutors and translators to assist students with particular needs or challenges is significant.

35. To both improve digital equity in the use of generative AI and harness the potential benefits of generative AI tools in reducing educational disadvantage, policies that remove barriers to access, provide targeted training and capacity building, and encourage community engagement and outreach should be pursued.

5.1 Removing barriers to access

36. Ensuring equitable access to technology for students is essential to help close the digital divide. This means that public schools must be resourced to allow them to provide students with access to technology and ensuring that digital technology is available for use in community facilities including libraries.

37. Collaborations between government agencies, educational institutions, not-for-profit organisations and the private sector are crucial for ensuring access to resources to benefit disadvantaged cohorts.

38. These resources might include adaptive learning platforms or AI-powered tutoring systems tailored to diverse learning styles and abilities. Special emphasis should be placed on developing culturally relevant and inclusive materials that resonate with the experience and backgrounds of students from diverse communities. Providing relevant AI-enabled educational resources in a targeted way can help ensure that these technologies contribute towards overcoming educational disadvantage.

5.2 Providing targeted training and capacity building

39. Policies should focus on providing targeted training and capacity building programs for teachers and students in schools with a higher proportion of disadvantaged students. These programs should aim to provide training on generative AI tools and applications, assist teachers in effectively integrating generative AI tools into their teaching practices, and encourage schools to foster a culture of technology-enabled learning.

5.3 Encouraging community engagement and outreach

40. Policies should reach beyond training for teachers, and emphasise community engagement and outreach programs that actively involve parents, families and community organisations in understanding and using generative

AI tools. Community workshops, awareness campaigns, and digital literacy programs can play a vital role in promoting the benefits of AI and equipping parents with the knowledge needed to support their children's learning journey.

6 Domestic practices and policies

41. There has recently been significant work done on a national scale in Australia to explore the opportunities and challenges of generative AI in education. There has been early work done within the tertiary education sector to address the potential impact of generative AI tools. Examples include a range of resources developed by the [Tertiary Education Quality and Standards Agency](#) (TEQSA), including the [AAIN Generative Artificial Intelligence Guidelines](#) that were developed by the Australian Academic Integrity Network (AAIN) Generative AI Working Group in March 2023.
42. Individual universities have also begun developing guidelines and policies to address the use of generative AI tools by students and staff, with example guidance being developed by the [Australian National University](#), [Deakin University](#), [Monash University](#), and [UNSW](#).
43. Resources have also been developed in a number of States and Territories relating directly to the use of generative AI in primary and secondary education. For example, in South Australia [information about AI in schools has been produced by the Department for Education for parents and carers](#), and the SACE Board South Australia has developed [Guidelines for using AI in SACE assessments](#).
44. In New South Wales, while student access to generative AI applications on public school networks continues to be restricted, the Department of Education has developed [Guidelines regarding use of generative AI \(ChatGPT\)](#) for the use of department staff who have access to generative AI tools.

Endnotes

- ¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education* ('General Comment No. 13'), UN Doc E/C.12/1999/10 (8 December 1999). <[tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1999%2F10&Lang=en](https://www.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1999%2F10&Lang=en)>
- ² *International Covenant on Economic, Social and Cultural Rights*, article 13; *Convention on the Rights of the Child*, articles 13, 17, 28 and 29; *Convention on the Rights of Persons with Disabilities*, articles 9, 21, 24 and 26; *Convention on the Elimination of All Forms of Discrimination Against Women*, articles 10 and 14; *International Convention on the Elimination of All Forms of Racial Discrimination*, articles 5 and 7; *Universal Declaration of Human Rights*, article 26.
- ³ Farida Shaheed, *Securing the right to education: advances and critical challenges* (Report of the Special Rapporteur on the right to education, Farida Shaheed) ('Special Rapporteur on the right to education report'), 27 June 2023, A/HRS/53/27, [8] <[A/HRC/53/27: Securing the right to education: advances and critical challenges - Report of the Special Rapporteur on the right to education, Farida Shaheed | OHCHR](https://www.ohchr.org/en/hrbodies/hrc/2023/27/27_08)>
- ⁴ See, for example, United Nations Educational, Scientific and Cultural Organization, *AI and education: Guidance for policy-makers* ('UNESCO Guidance') (2021) 18. <[AI and education: guidance for policy-makers - UNESCO Digital Library](https://unesco.org/en/publications-and-outputs/ai-and-education-guidance-for-policy-makers)>.
- ⁵ *Universal Declaration of Human Rights*, article 12; *International Covenant on Civil and Political Rights*, article 17; *Convention on the Rights of the Child*, article 16; *Convention on the Rights of Persons with Disabilities*, article 22.
- ⁶ Office of the United Nations High Commissioner for Human Rights, *The Right to Privacy In the Digital Age*, UN Doc A/HRC/51/17 (4 August 2022) 3. <<https://www.ohchr.org/en/documents/thematic-reports/ahrc5117-right-privacy-digital-age>>
- ⁷ *Ibid.*, 4.
- ⁸ See for example, [Human Rights in the Digital Age](#) (Global Digital Compact submission to the United Nations' Office of the Secretary-General's Envoy on Technology); [Safeguarding the Right to Privacy](#) (submission to the Attorney-General's Department in response to the Privacy Act Review Report 2022); [Foreign Interference through Social Media](#) (submission to the Senate Select Committee on Foreign Interference through Social Media); [Privacy Risks in the Metaverse](#) (submission to the Australian Competition and Consumer Commission as part of the Digital Platform Services Inquiry 2020-25).
- ⁹ General Comment No. 25 (n 11) [42].
- ¹⁰ Drew Harwell, 'Remote learning apps shared children's data at a dizzying scale', *The Washington Post*, 24 May 2022. <[Remote learning apps tracked kids for ads - The Washington Post](https://www.washingtonpost.com/technology/2022/05/24/remote-learning-apps-tracked-kids-for-ads/)>.
- ¹¹ Australian Human Rights Commission, *Protect children from data surveillance*, 27 July 2021. <[Protect children from data surveillance | Australian Human Rights Commission](https://www.humanrights.gov.au/our-work/protect-children-from-data-surveillance)>.
- ¹² Special Rapporteur on the right to education report (n 5) [95].
- ¹³ Australian Human Rights Commission, *Human Rights and Technology Final Report* ('Final Report') 2021, 13. <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-final-report-2021>>.
- ¹⁴ Discussion Paper (n 1) 7-9.
- ¹⁵ Deep fakes were defined in the report as 'high-quality artificial images, video and speech for disinformation, including by state actors': see Australia's Chief Scientist, *Generative AI: Language*

models and multimodal foundation models (Rapid Response Information Report, 24 March 2023)

12. <https://www.chiefscientist.gov.au/sites/default/files/2023-06/Rapid%20Response%20Information%20Report%20-%20Generative%20AI%20v1_1.pdf>.

¹⁶ Discussion Paper (n 1) [2.2].

¹⁷ Tess Bennett, 'This program can tell if ChatGPT did your homework', *The Australian Financial Review* (12 January 2023). <[ChatGPT detection program can see if a robot did your homework \(afr.com\)](#)>.

¹⁸ Kevin Roose, 'Don't Ban ChatGPT in Schools. Teach with it', *The New York Times*, 12 January 2023. <[Don't Ban ChatGPT in Schools. Teach With It. - The New York Times \(nytimes.com\)](#)>.

¹⁹ See, for example, Conor Duffy, 'Public school bans on AI tools like ChatGPT raise fears private school kids are gaining an unfair edge and widening a digital divide', *ABC News*, 26 May 2023. <[Public school bans on AI tools like ChatGPT raise fears private school kids are gaining an unfair edge and widening a digital divide - ABC News](#)>.

²⁰ Thomas, J., Barraket, J., Parkinson, S., Wilson, C., Holcombe-James, I., Kennedy, J., Mannell, K., Brydon, A, *Australian Digital Inclusion Index: 2021* (RMIT, Swinburne University of Technology, 2021). <[Digital inclusion: the Australian context in 2021 - Australian Digital Inclusion Index](#)>.

²¹ Good Things Foundation Australia, *The digital divide*. <[The digital divide - Good Things Foundation Australia](#)>. (Website accessed 14 July 2023).

²² The Smith Family, *The 'Digital Divide' and other learning related challenges remain major issues according to a new survey by the Smith Family* (Media release, 17 November 2021). <[The Smith Family Pulse Survey](#)>.

²³ Barbara Preston Research, *Digital inclusion for all public school students* (June 2020). <[DigitalInclusion_BPreston.pdf \(aeufederal.org.au\)](#)>.