Artificial intelligence in New South Wales

Response to Question on Notice

Question

The Hon. STEPHEN LAWRENCE: Just out of interest, are you aware of any court cases in superior courts where procedural fairness and AI have been the subject of a ground of review, or something like that?

PAUL MILLER: I'm not, but can I take it on notice?

The Hon. STEPHEN LAWRENCE: Sure. Thank you.

Answer

Our 2021 special report to Parliament, '[The new machinery of government: Using machine technology in administrative decision-making](#)' analyses (in Part 2) how administrative law requirements relate to the use of Artificial Intelligence (AI) and automated decision-making (ADM) systems by public sector agencies. **Chapter 8** of that report deals specifically with the issue of procedural fairness.

The relevant administrative law principles discussed (including principles of procedural fairness) are ones that have generally been laid down by courts in cases that were not specifically concerned with the use of AI or ADM. However, as our report explains, there is no reason to expect that the same principles would not apply in novel circumstances (such as where functions are being performed with the assistance of AI), although precisely how they apply may not be entirely certain until specifically considered by legislation or court decision – see **Chapter 5**.

Although my office has not undertaken any detailed research on this question since our 2021 report, we are not aware of recent superior court case law that specifically addresses the question asked by the Committee.

More generally on the issue of procedural fairness (and other core administrative law principles) and their application in the context of AI/ADM, the Committee might also be assisted by:

- Our more recent 2024 special report, which incorporates a Research Report - [Automated Decision-Making in NSW: Mapping and analysis of the use of ADM systems by state and local government (Research Report)](#). **Chapter 4** of that Research Report also includes some analysis of administrative law requirements, including procedural fairness.

- The academic articles referenced in footnotes 6 and 7 of our [2021 Report](#).

11 April 2024

The Hon Jeremy Buckingham MLC
Committee Chair
Legislative Council Portfolio Committee No. 1 – Premier and Finance

By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Mr Buckingham

Inquiry into Artificial Intelligence in NSW – response to question on notice

Enclosed is my response to the question taken on notice at the hearing of 11 March 2024 in relation to the Committee's *Inquiry into Artificial Intelligence in NSW*.

Please contact Christie Allan, Executive Strategy Officer at   if you have any questions about this letter.

Yours sincerely

Paul Miller
NSW Ombudsman