

Submission on the Review of the *Draft Algorithm Charter*

Te Pōkapū, on behalf of Te Mana Raraunga (Māori Data Sovereignty Network)

Introduction and context

1. Te Mana Raraunga, the Māori Data Sovereignty Network¹, brings together over 100 Māori researchers, practitioners and entrepreneurs from a range of sectors. Te Mana Raraunga advocates for the realisation of Māori rights and interests in data, for data to be used in safe and ethical ways to enhance the wellbeing of Māori people, language and culture, and for Māori governance over Māori data.² Māori data “refers to digital or digitisable information or knowledge that is about or from Māori people, our language, culture, resources or environments”.²
2. Te Mana Raraunga has articulated principles of Māori Data Sovereignty that guide our approach to the collection, management, and use of data.² Specifically, these principles are: Rangatiratanga (Authority); Whakapapa (Relationships); Whanaungatanga (Obligations); Kotahitanga (Collective benefit); Manaakitanga (Reciprocity); and, Kaitiakitanga (Guardianship).
3. We welcome the opportunity to comment on the *Draft Algorithm Charter*. We see a critical need to ensure Māori rights and interests are upheld in the use of algorithms by government.
4. The environment within which data are generated, collected, stored, and used in Aotearoa New Zealand has changed significantly in recent years. Alongside this changing environment, Māori and other Indigenous peoples are rearticulating sovereignty in relation to data, data relations and data practices. These rights are reaffirmed in the United Nations Declaration on the Rights of Indigenous Peoples, as well as in other international and local conventions and treaties.
6. There is a substantial and growing body of research and scholarly work that considers issues of algorithmic fairness, justice and bias (refs). In particular, this research identifies the ways in which many algorithmic practices and applications serve to re-inscribe inequities for particular groups in society (refs).
7. Given the history of state data relations and practices for Māori, and the evidence surrounding algorithmic bias and injustice, Te Mana Raraunga call for a stronger approach to regulating government use of algorithms. A voluntary charter is unlikely to provide the necessary protections and safeguards for Māori in relation to government use of algorithms. **Our main feedback, therefore, is that an ‘Algorithm Charter’ is insufficient to protect Māori rights and interests. Regulation that includes mechanisms for accountability and redress is necessary. Such regulation would need to include Māori data governance at all levels.**

¹ www.temanararaunga.maori.nz

² *Principles of Māori Data Sovereignty*, available on www.temanararaunga.maori.nz

While our main feedback on the *Charter* is that it is insufficient to protect Māori rights and interests, we offer some specific comments on the *Draft Algorithm Charter* below. Firstly, we provide some feedback on the wording and content of the *Charter* generally, followed by some feedback on how the *Charter* relates to Te Mana Raraunga's Principles of Māori Data Sovereignty.

General comments on the Charter

8. The *Draft Algorithm Charter* is written in a way that assumes that the use of algorithms by government agencies is inevitable and useful in improving peoples' lives. These assumptions are not supported in the document by any research or evidence, particularly in relation to their usefulness for Māori.
9. Overall, the wording of the draft *Algorithm Charter* is weak and vague. The document states that the charter is "to demonstrate government's commitment to using algorithms in a fair and transparent way", and that organisations signing up to it therefore are "committed to transparent and accountable use of operational algorithms and other advanced data analytics techniques that inform decisions significantly impacting on individuals or groups".
10. Several of the statements seem to address the issue of transparency (e.g. "Clearly explain how significant decisions are informed by algorithms and be clear where this isn't done for reasons of greater public good (for example, national security); Publish information about how data are collected and stored; Upon request, offer technical information about algorithms and the data they use; Clearly explain who is responsible for automated decisions and what methods exist for challenge or appeal via a human). However, transparency about what has been done and how by organisations does not address issues relating to Māori data sovereignty, or broader ethical issues about whether what has been done is ethical, equitable or acceptable to communities and individuals.
11. While statements are made relating to accountability, the mechanisms for holding government agencies to account are unclear. The charter seems to rely on government agencies establishing accountability processes rather than requiring any independent oversight or review.
12. The obligations to Māori are unclear. Any framework on the use of government algorithms needs to actively recognise government obligations under the Treaty of Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples. It is not clear what "Embed a Te Ao Māori perspective in algorithm development or procurement" means, how this would be monitored, and why Treaty of Waitangi and other obligations are not directly referenced.
13. The statement that the charter will mean organisations "Take into account the perspectives of communities, such as LGBTQI+, Pasifika and people with disabilities as appropriate", is weak and insufficient to protect communities' rights and interests. Any framework should require

government agencies to include communities in governance and decision-making around the use of algorithms, not simply to consider their perspectives.

14. The charter does not seem to incorporate the knowledge base around algorithmic bias in the formulation and direction of the statements it includes. In racialised colonial societies, it is highly likely that algorithms will produce racialised inequities. The commitment to “regularly collect and review data... and periodically assess this for unintended consequences, for example bias” is not sufficient. There is no clarity around what ‘periodically’ means, and no accountability mechanisms or avenues for redress or appeal outlined in the *Charter* for when bias is found.

Comments relating to Principles of Māori Data Sovereignty

Rangatiratanga | Authority

15. Māori should be involved in governance and decision-making around government use of data, including which data are used in algorithmic decision-making or advanced data analytics. This should include recognition of data governance requirements for any data that is identifiable to a particular iwi or Māori collective.

Whakapapa | Relationships

16. Any new regulatory frameworks or accountability mechanisms in this space need to proactively consider and address the potential future impacts of government use of algorithms and advanced data analytics for Māori, and take steps to pre-empt potential future harm.

Whanaungatanga | Obligations

17. Both individual and collective rights in relation to data need to be recognised in government use of algorithms. A focus on individual privacy rights is not sufficient, and does not align with Indigenous data sovereignty or Indigenous rights under UNDRIP.
18. The government should be required to report regularly on the impacts on Māori of the implementation and operation of algorithms.

Kotahitanga | Collective benefits

19. Government agencies should be required to ensure that their use of algorithms provides real meaningful benefits for Māori, both at individual and collective levels.

Manaakitanga | Reciprocity

20. Free, prior and informed consent should be the underpinning principle and preferred approach to all government collection and use of data, in line with Indigenous rights.

21. Strong Māori governance should be embedded to ensure that government use of algorithms upholds the dignity of Māori and that algorithms and data analytics are not stigmatising or harmful to Māori collectives and/or individuals.

Kaitiakitanga | Guardianship

22. Māori should have control over deciding the protocols and policies around Māori data, including how Māori data are used in algorithms and advanced analytics.