



RESPONSE TO AI INQUIRY QUESTIONS ON NOTICE

Re: Reference to a law in New York that requires companies to independently audit AI systems for bias when using them in hiring and promotion decisions that they make. What is the scope of this law, and who conducts the audits? Has it been successful? Is it something that we could even think about here?

The Tech Policy Design Centre is providing this response to the question taken on notice by Zoe Hawkins (Head of Policy Design, TPDC) from the committee during her appearance at the public hearing on 20th May 2024 to give evidence as part of the Adopting AI Inquiry.

The question requested further information regarding the New York City *Local Law 144 of 2021* (*the Law*) on businesses using automated employment decision making tools in hiring processes.

Scope of Local Law 144 of 2021

The Law has been in force from 5 July 2023.

The [Law](#)¹ prohibits employers and employment agencies in New York City from using automated employment decision making tools (AEDT) that substantially assist or replace employment decision making by humans, except when:

- the tool has been subject to a bias audit within one year of using the tool, and
- that information about the bias audit is publicly available, and
- certain notices have been provided to employees or job candidates.

Notices regarding use of AEDTs are required to be given to employees or job candidates for the [following reasons](#)²:

- that an AEDT will be used in connection with the assessment or evaluation of the candidate;
- the job qualifications and characteristics that the AEDT will use in evaluating the candidate; and
- the information about the data collected for the AEDT will either be available on the employer's website or will be available upon a candidate's request.

Organisations that [violate](#) the Law will be liable to pay a civil penalty of up to US\$500 per violation of the first day.³ Each subsequent violation carries a civil penalty from US\$500 to US\$1,500.

Conducting Audits

The AEDT must be subject to a bias audit a year prior to being used in employment decisions. For the audit, employers must calculate the AEDT's selection rate and impact ratio for a person's sex, race/ethnicity, and intersectional categories of sex and ethnicity.

[Data requirements](#) mean that the audit conducted must use historical data of the AEDT, in which the historical data used may be from one or more employers or employment agencies that use the AEDT.⁴ If there is inadequate historical data available, test data may be used instead, but the summary of results in the bias audit must explain why historical data could not be used.



Implementation

The Law represents a step towards regulating decision-making algorithms and creating a market for independent auditors. However, research from [Consumer Reports](#) indicates that only a small proportion of employers are choosing post audits and notices for the use of AEDTs.⁵ The Law's approach of requiring employers to self-assess whether they meet the bar of using AEDTs to 'substantially assist or replace employment decision making' may contribute to this dynamic.

Any consideration of a similar law for Australia would need to factor in scope of employers captured (i.e, only businesses that operate and hire within Australia), what is the threshold for using AEDTs in decision-making, and what will be presented in audits and notices to employees will have to be tailored to the Australian context. There would also need to be considerations to review the impact of the law on employment trends where it was being applied to ensure it was not creating new biases or exacerbating existing ones.

References

¹ <https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page>

² <https://nyc.legistar1.com/nyc/attachments/c5b7616e-2b3d-41e0-a723-cc25bca3c653.pdf>

³ <https://www.workforcebulletin.com/taking-stock-of-new-york-citys-automated-employment-decision-tools-law>

⁴ <https://rules.cityofnewyork.us/wp-content/uploads/2023/04/DCWP-NOA-for-Use-of-Automated-Employment-Decisionmaking-Tools-2.pdf>

⁵ <https://innovation.consumerreports.org/new-research-nyc-algorithmic-transparency-law-is-falling-short-of-its-goals/>